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ABSTRACT

A letter of transmittal from the Citizen's Advisory Council on the Status of Women (CACSW) to President Nixon introduces the 1972 third annual report. The central thrust of the report is the recommendation for equal status for women directed to Federal agencies throughout 1972. A detailed discussion of the legislation includes: (1) the Federal and State Equal Rights Amendments, (2) Title IX of the Education Amendment, (3) Title VII of the Equal Employment Opportunity Act, (4) Equal Pay Act, and (5) Executive Order 11246 to develop and implement affirmative action programs. The progress of women's achievement of equal employment in Federal government, Civil Service, and military service positions is reported. Recommendations on credit and manpower training and a report of the public service activities of the council conclude the report. A 57-page appendix includes: (1) lists of women in government, (2) sections on women's rights in the 1972 Republican and Democratic platforms. (3) states and organizations supporting the Equal Rights Amendment, (4) CACSW Report of need for studies of sex discrimination in public schools, including a bibliography, (5) Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, and (6) CASCW recommendations on credit, manpower training, and household arts. (MW)

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WOMEN

CITIZEN'S ADVISORY COUNCIL ON THE STATUS OF WOMEN
Washington, D.C. 20210

Transmitted to the President, May 1973

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN
Washington, D.C. 20210

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* Does not endorse the Equal
Rights Amendment.

WOMEN IN 1972

CITIZENS' ADVISORY COUNCIL
ON THE STATUS OF WOMEN

APRIL 1973

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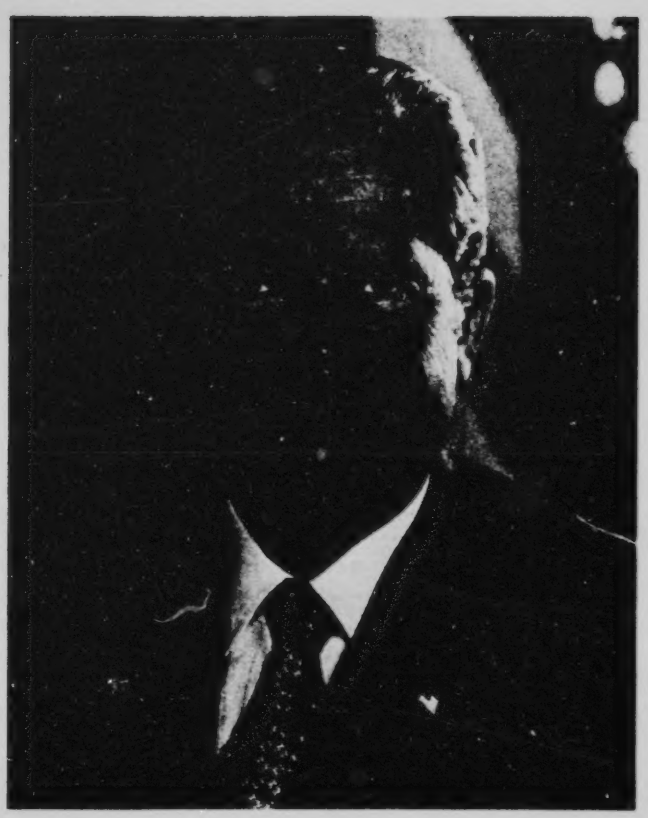


....America will not be able to achieve its full economic potential unless every woman who wants to work can find a job that provides fair compensation and equal opportunity for advancement.

This Administration is committed to the promotion of this goal. We support the Equal Rights Amendment. We have opened the doors of employment to qualified women in the Federal service. We have called for similar efforts in businesses and institutions which receive Federal contracts or assistance.

Richard M. Nixon
Message to the Congress
February 22, 1973

Citizens' Advisory Council on the Status of Women
Washington, D.C. 20210

CHAIRMAN
Mrs. Jacqueline G. Gutwillig
Arizona

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

As your appointees, the members of the Citizens' Advisory Council on the Status of Women, are signally honored to submit this third annual report for the year 1972. Unprecedented political, legal, and economic advances made this an historic year for women.

This report reflects our efforts and the efforts of others to make constructive contributions to contemporary life. We strived to set forth some of the dimensions of the needs of women; to be a source of information to the private and public sectors; to achieve a meaningful input toward the resolving of problems; and to arouse consciousness of the issues of concern to women. Our recommendations for equal legal status for women directed to your office and the Federal agencies throughout the year, is the central thrust of the report.

Looking backward, most of the Council's findings in the many areas of benefit to women on which we made recommendations or expressed opinion have been supported by your office or other concerned Federal agencies.

We note and endorse enthusiastically:

— That the Presidential State of the Union message included a section entitled "Equal Rights for Women."

— That a Presidential letter on March 18, 1972, to the minority leader was climaxed by the passage of the Equal Rights Amendment by the Senate on March 22, 1972.

— That legislation was approved giving enforcement authority to the Equal Employment Opportunity Commission and extending coverage.

— That the Equal Employment Opportunity Commission issued revised and much-improved sex discrimination guidelines including a section on maternity leave, which follows the 1970 recommendation of the Council regarding job-related maternity benefits.

— That the Office of Federal Contract Compliance issued revised Order 4, which requires Government contractors to develop affirmative action programs designed to eliminate sex discrimination.

— That Section 901 of the Education Amendments of 1972, with certain exceptions, prohibits discrimination on account of sex in educational programs receiving Federal financial assistance.

— That legislation to extend the jurisdiction of the Commission on Civil Rights to encompass sex-based discrimination was signed into law.

— That Administration Bill H.R. 1 included a section providing free child development centers for children of low-income families.

— That the Revenue Act of 1971 liberalized tax deductions for expenses for child care.

— That Presidential attention is turned to the problems of the aged, a majority of whom are women and a large proportion of whom are in poverty.

Looking to the future, the Council aspires to obtain positive results for its continuing concerns which, as recommendations or opinions, have been sent directly to your office or to interested agencies.

These continuing concerns include:

— That the number of Commissioners on the Commission on Civil Rights be increased so that women with knowledge and stature in the field of women and the law can be appointed to the Commission.

— That consideration be given for the children in families just above low-income levels who will not benefit from free child development centers available only to children of low-income families.

— That consideration be given for children in families just above low-income level, who will not directly benefit from liberalized tax deductions for child care as provided in the Revenue Act of 1971.

— That the Civil Service Commission withdraw from the Federal Personnel Manual the guidelines for maternity leave and apply the same policies and practices as are applied to other temporary disabilities.

— That the Office of Education place greater emphasis on vocational counseling of girls in junior high school and high school grades.

— That the Office of Education, Department of Health, Education and Welfare, prepare for counselors two annotated bibliographies, one of employment opportunities for young people and one of resource materials and textbooks for elementary and secondary schools.

— That the Secretary of Labor establish priorities as sensitive to sex discrimination as to race discrimination in manpower training programs and in referrals to training and employment; that women trainees in all programs be offered all training available to men and fully counseled as to relative pay and advantages to training for "men's" jobs.

— That the Secretary of Labor and Secretary of Health, Education and Welfare give a high priority to vocational training programs in the household arts and to manpower training proposals for upgrading the occupation.

— That the private sector, including credit-granting institutions and community groups, examine and reform practices which deny credit to married women solely because they are married, and deny credit to single women under circumstances where it would be granted to men.

— That laws where necessary be changed so women will not be discriminated against in the granting of credit.

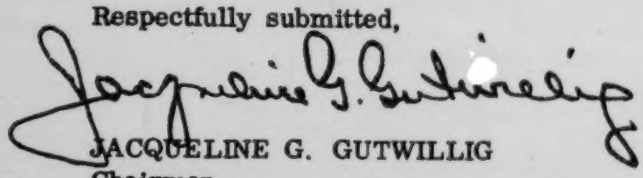
Your leadership and your intensification of the Administration's efforts to make better use of women's talents have given women of the country a

new feeling of responsibility and has added strength to their heightened desire to be full contributing citizens.

The second term of your Presidency, with your expressed hope "to lead the nation out of a crisis of the spirit" will advance more rapidly the continual struggle to achieve human equality. These next years under your leadership your Council will work toward meeting this worthy challenge.

We deeply appreciate the privilege to serve your Administration and our country.

Respectfully submitted,



JACQUELINE G. GUTWILLIG
Chairman

TABLE OF CONTENTS

	Page
Letter of Transmittal	i
WOMEN IN 1972	1
EQUAL RIGHTS AMENDMENT	2
Federal	2
State Equal Rights Amendments	6
EDUCATION	7
EMPLOYMENT	9
Title VII	9
Childbearing Leave	10
Equal Pay Act	10
Executive Order 11246	11
APPOINTMENT OF WOMEN TO POLICY POSTS IN THE FEDERAL GOVERNMENT	13
EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL CIVIL SERVICE	13
MILITARY SERVICE	15
RECOMMENDATIONS ON CREDIT AND MANPOWER TRAINING	16
Credit	16
Manpower Training	16
PUBLIC SERVICE ACTIVITIES	17
ACKNOWLEDGMENTS	18
APPENDICES	
Appendix A -- Women in Congress	20
Appendix B -- Section on Women's Rights, Republican Platform - 1972	21
Section on Women's Rights, Democratic Platform - 1972	24

Page

Appendix C -- States Ratifying the Equal Rights Amendment 26
Appendix D -- Only Equal Rights Amendment Will Promptly End Prison Sentence Discrimination Because of Sex 27
Appendix E -- The Equal Rights Amendment--Senator Ervin's Minority Report and the Yale Law Journal 30
Appendix F -- Remarks of Jacqueline G. Gutwillig before the Equal Rights Amendment Jubilee--Ratification Assembly, May 10, 1972 44
Appendix G -- National Organizations Supporting the Equal Rights Amendment 49
Appendix H -- Need for Studies of Sex Discrimination in Public Schools 51
Appendix I -- Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex 64
Appendix J -- Women Appointed or Promoted (Career and Non-Career) by the Nixon Administration to High Level Positions (GS-16 or Above) January 1, 1972 - December 31, 1972 71
Appendix K -- CACSW Recommendation on Credit 76
Appendix L -- CACSW Recommendation on Manpower Training and Household Arts 77

WOMEN IN 1972

Unprecedented political, legal, and economic advances made 1972 an historic year for women. It was the year in which women surfaced into effective political action.

Women's organizations and women in the political parties, including the newly-organized women's political caucuses, worked tirelessly on many fronts for improvement in the status of women. Their efforts brought an increase in women's power within the political parties; an increase in the numbers of women elected to public office; passage of the Equal Rights Amendment by the Congress and ratification by 22 State legislatures; and passage of other Federal and State legislation improving the legal and economic status of women.

The November election resulted in an increase in the number of women in the Federal Congress and in the State legislatures, reversing the decline of previous years.

In the U.S. Congress the only woman Senator, Margaret Chase Smith, was defeated, but the election of 14 women to the House of Representatives--five newly elected and nine re-elected--resulted in a net increase of one woman more than in the 92nd Congress. In the 87th Congress there were 19 women, the highest number ever to serve; in the 88th, 13; 89th, 12; 90th, 12; 91st, 11; and 92nd, 13. A list of women in Congress appears in Appendix A.

An even greater growth came in the State legislatures where women members increased 28.2 percent, from 344 to 441. The following State legislatures have ten percent or more women members: New Hampshire, 25.0 percent; Arizona, 14.4 percent; Oregon, 12.2 percent; Delaware, 11.2 percent; Vermont, 11.1 percent; and Alaska, 10 percent.

All the following States doubled or more than doubled the number of women: Minnesota from one member in the last legislature to six in the present; Montana, from two to nine; North Carolina, from two to nine; Texas, from two to six; Illinois, from four to 11; Wyoming, from two to five; South Carolina, from two to five; North Dakota, from five to 12; Massachusetts, from five to 10; and South Dakota, from three to six.*

Responding to testimony from many women's groups, including the National Women's Political Caucus, both parties included in their platforms commitments on practically all issues of major concern to women. Sections relating to women of the platforms of both parties appear in Appendix B. Both parties had larger proportions of women delegates at the conventions than ever before, and a greater participation of women in the operation of the conventions.

The unprecedented quality and quantity of women's legislation passed by the 92nd Congress was yet another evidence of the growing political strength of concerned women. Individual items of legislation are discussed under appropriate headings below.

EQUAL RIGHTS AMENDMENT

Federal

Forty-nine years after it was first introduced into Congress, the Equal Rights Amendment was passed March 22, 1972, by an overwhelming vote in the Senate--84 to 8. Nine attempts to amend by Senator Ervin were all defeated. After the vote on the first amendment to exempt women from the draft was defeated 73 to 18, it was apparent the battle was won.

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* Based on November 20, 1972, release of National Women's Political Caucus; State Elective Officials and the Legislatures, compiled and published by the Council of State Governments; and telephone consultations with officials of State legislatures.

Within hours of the final Senate vote Hawaii became the first State to ratify. Hawaii was prepared to vote quickly since it had been debating an equal rights amendment to the State Constitution and other legislation introduced by Council member Honorable Patricia Saiki to correct inequities in Hawaii's laws. Twenty-two State legislatures have now ratified. A list of those ratifying as of the end of 1972 is in Appendix C.

Questions have arisen as to whether a State legislature may rescind a vote to ratify a constitutional amendment. The Counsel to the Constitutional Amendments Subcommittee of the U.S. Senate, after reviewing judicial and congressional precedents, concluded that:

> ....It is my legal opinion as Counsel of the Subcommittee on Constitutional Amendments of the United States Senate that once a State has exercised its only power under Article V of the United States Constitution and ratified an Amendment thereto, it has exhausted such power, and that any attempt subsequently to rescind such ratification is null and void. The Attorney General of the State of Idaho has recently expressed the same view in an opinion to the legislature of that state....

A copy of the opinion may be secured from the Constitutional Amendments Subcommittee, Room 300, Old Senate Office Building, Washington, D.C. 20510, telephone area code 202--225/3018.

In many States coalitions of women's organizations have been formed to work for ratification of the Equal Rights Amendment and have established strong ties with women in the State legislatures, a development that bodes well for the future.

The majority report of the Senate Judiciary Committee will be the most important document used by the courts in interpreting the Equal Rights Amendment. Senator Bayh inserted excerpts from the majority report in the Congressional Record for March 22, 1972, and reprints are available from his office. This is the most authoritative statement available as to the intent of Congress in passing the Equal Rights Amendment and will be given great weight by the Courts in interpreting the Amendment. It is basically in accord with the legal theory first proposed by the Council in its 1970 paper--"The Proposed Equal Rights Amendment to the United States Constitution - A Memorandum."

The National Federation of Business and Professional Women's Clubs published a list of questions and answers about the Equal Rights Amendment, and the Research Department of the General Federation of Women's Clubs has issued a "Memorandum re Ratification of Equal Rights Amendment." Both of these papers are very useful to those seeking ratification. Common Cause also prepared a similar statement, which is being widely used by groups seeking ratification in the State legislatures.

The Council has published additional papers this year on the Equal Rights Amendment--"Only Equal Rights Amendment Will Promptly End Prison Sentence Discrimination Because of Sex," Appendix D, and "The Equal Rights Amendment--Senator Ervin's Minority Report and the Yale Law Journal," Appendix E. Chairman Gutwillig's remarks on military service before the Equal Rights Amendment Jubilee - Ratification Assembly in Washington, D.C. on May 10, 1972, appears in Appendix F.

These and earlier Council papers, which are in harmony with the majority report of the Senate Judiciary Committee, continue to be in steady demand. Women's groups working for the Amendment have furnished Council publications to State legislatures, the press, and private organizations.

Some of the claims about the effects of the Equal Rights Amendment are based on remote possibilities. For example, some opponents say that the Equal Rights Amendment could abolish obligations of a man to support his family; that it could abolish rights to child support; that it could result in permitting homosexual marriages.

It is true that the State legislatures and the Supreme Court could do all of these things. They could now, without the Equal Rights Amendment, pass such laws and make such interpretations of the 14th amendment. But the possibility that would be done is very remote, either under the 14th amendment or the Equal Rights Amendment.

There are some opponents who go so far as to claim that the Equal Rights Amendment would result in loss of economic protection by homemakers. To assume that the Courts or legislatures will abolish family support obligations is to assume that the Courts and the legislatures will act irresponsibly and capriciously, without regard to the public welfare.

Current debate of the Equal Rights Amendment, actually spotlighting the very inadequate economic protection now available to women homemakers, could very well result in greater protection rather than less. Already several concerned groups are studying the effects of present laws on the security of homemakers, both during marriage and at dissolution of marriage.

Some opponents seem to believe that the Equal Rights Amendment will change social relationships between men and women. The Equal Rights Amendment applies only to Government action and legal rights, not to social customs. The question of who pays the dinner check, opens the door, or pulls out a chair has nothing to do with equal legal rights. Social customs and personal relationships between men and women would be decided by the individuals involved.

As Senator Marlow Cook said:

> It is important to note that the only kind of sex discrimination which [ERA] would forbid is that which exists in law. Interpersonal relationships and customs of chivalry will, of course, remain as they always have been, a matter of individual choice. The passage of this Amendment will neither make a man a gentleman nor will it require him to stop being one.

The Equal Rights Amendment is also frequently discounted by calling it a Communist plot or a "women's lib" proposal. The Equal Rights Amendment was initiated in 1923, the product of an alliance between the suffragists of the National Woman's Party and two Republican members of Congress, both of whom were from Kansas. The Amendment was introduced in every session of the Congress thereafter and gradually gained support of the broad spectrum of women's organizations, church organizations, unions, and civil rights groups now backing it. It was nurtured in the early years by the untiring efforts of mature, intelligent women of fine character--both employed women and women at home. The General Federation of Women's Clubs and the National Federation of Business and Professional Women's Clubs were among the first groups to join the National Woman's Party in seeking the Amendment. The National Association of Women Lawyers, the American Federation of Soroptimist Clubs, the National Association of Colored Women's Clubs were also among the early adherents.

At the present time very few major organizations concerned with human rights oppose the Equal Rights Amendment. Both major parties urge its early ratification in their platforms (see Appendix B).* Since our last annual report, the following organizations have endorsed the Amendment: American Bar Association, American Federation of Teachers (AFL-CIO), Association of the Bar of the City of New York, Communication Workers of America (AFL-CIO), International Union of Electrical, Radio, and Machine Workers (AFL-CIO), League of Women Voters, National Association for the Advancement of Colored People (NAACP), National Board of YWCA, and Network (a national task force to facilitate the process of the political education and action for American religious women and their organizations in a ministry for social justice).

Some State AFL-CIO Councils have supported the Equal Rights Amendment, although the national organization still opposes it. A list of supporting organizations appears in Appendix G.

State Equal Rights Amendments

In November 1972, the voters of six States ratified Equal Rights Amendments to their State Constitutions--Colorado, Hawaii, Maryland, New Mexico, Texas, and Washington. Other States that had previously adopted amendments to their own Constitutions are Illinois, Pennsylvania, and Virginia. Connecticut voters will consider a State amendment in 1974.

The Wisconsin legislature passed an amendment in 1972--the first step in a three step process. At the same time the legislature directed the Legislative Council to draft revisions to all Wisconsin statutes treating women and men differently. The Council set up an advisory committee, including members of the legislature and very knowledgeable women representing organizations supporting the amendment. The committee was chaired by a woman legislator, who had been a leader in the Assembly consideration of the measure. The committee has presented its draft of revisions to the Council, which will submit a bill to the legislature.

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* The Communist Party U.S.A. and the American Independent Party are both opposed to the Equal Rights Amendment.

EDUCATION

Title IX of the Education Amendments of 1972 was a major step forward in prohibiting discrimination in education at all levels. The basic sentence reads as follows: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."

There are a number of exceptions, particularly with respect to admissions. The Act, for example, will not require admission of girls to boys' elementary and secondary schools (except vocational schools) or vice versa; but it does require that boys and girls receive the same benefits in co-educational schools.

The Comprehensive Health Manpower Training Act of 1971 and the Nurse Training Act of 1971 prohibit discrimination because of sex in admission to colleges, schools, and training centers funded under the Acts, including medical and dental schools, schools of veterinary medicine and nursing, etc. The following provision, with no exceptions provided, is included in both laws:

> The Secretary [of Health, Education and Welfare] may not enter into a contract under this title with any school unless the school furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs (Sec. 110 of Public Law 92-157 and Sec. 11 of Public Law 92-158).

Detailed information concerning these Acts can be secured from the Department of Health, Education and Welfare, Office of Civil Rights, Washington, D.C. 20201.

The 1972 entering class of medical students had 20 percent women, up from 13.5 percent in 1971. The percentage of women in law schools increased from 4.6 percent in 1967 to 12 percent in 1972.

A task force of the Office of Education studied sex discrimination in the nation's schools, particularly the impact of Office of Education programs and policies, and published in December 1972 a forthright, well documented paper, "A Look at Women in Education." Copies can be secured from the Office of Education, Department of Health, Education and Welfare, Washington, D.C. 20201.

The Council, in J[illegible] 1972, published a paper "Need for Studies of Sex Discrimination in Public Schools" (Appendix H), which contains the following recommendation:

> State and city commissions on the status of women and other groups interested in education should foster the review of local public school systems to determine the degree of sex discrimination, especially with respect to (1) schools restricted to one sex, (2) courses of study in co-educational schools restricted to one sex, (3) the per capita expenditure of funds by sex for physical education courses and physical education extra curricular and other extra curricular activities, (4) textbooks, library books, and other curriculum aids, (5) school activities, such as hall patrols, safety squads, room chores, etc., and (6) promotion of teachers.

The Commission on the Reform of Secondary Education, established by the Charles F. Kettering Foundation through its affiliate the Institute for Development of Educational Activities, Inc., has on its agenda discrimination against women students. The Commission distributed the Council paper to its members and at their request a representative of the Council led a discussion on this topic at a fall meeting in Washington, D. C.

Among other publicity, the paper was reviewed at length in Guidepost (September 29, 1972, issue), the newsletter of the American Personnel and Guidance Association, which goes to its approximately 28,000 members. The Association also adopted the following resolution on the Strong Vocational Interest Blank (see Women in 1970, page 23, item 7):

> Whereas, the Strong Vocational Interest Blanks (SVIB) provide different occupational scores for men and women: that is, women cannot be scored on occupations like certified public accountant, purchasing agent, public administrator, and men cannot be scored on occupations such as medical technologist, recreation leader, physical education teacher; and whereas, when the same person takes both forms of the SVIB, the profiles turn out differently: for example, one woman scored high as a dental assistant, physical therapist, occupational therapist on the woman's profile, and physician, psychiatrist and psychologist on the man's form; and whereas, the SVIB manual states: "Many young women do not appear to have strong occupational interests, and they may score high only in certain 'premarital' occupations: elementary school teacher, office workers, stenographer-secretary. Such a finding is disappointing to many college women, since they

are likely to consider themselves career-oriented. In such cases, the selection of an area of training or an occupation should probably be based upon practical considerations, fields providing backgrounds that might be helpful to a wife and mother, occupations that can be pursued part time, are easily resumed after periods of non-employment and are readily available in different locales" (Campbell, rev. 1966, 13); therefore, be it resolved, that APGA commission duly authorize members to petition and negotiate with the SVIB publishers to revise their instruments, manuals and norm groups so as to eliminate discrimination; and be it further resolved, that this duly authorized commission develop with the test publishers an explanatory paper to circulate among all purchasers of SVIB materials including answer sheets a statement which outlines the possible limitations inherent in the current SVIB with suggestions for ways to minimize the harm; and be it further resolved, that the commission in cooperation with the test publisher set a deadline for the new forms to be published and distributed.

EMPLOYMENT

Title VII

The Equal Employment Opportunity Act of 1972 gave the Equal Employment Opportunity Commission authority to enforce Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment because of race, color, religion, sex, or national origin. Prior to the Act the EEOC could only attempt conciliation. If conciliation was not successful, the person discriminated against could file a complaint in Federal court against the employer or union. Now the EEOC can file the complaints in court.

The new law also extended coverage of Title VII to some groups that had previously been excluded--to "educational personnel" of educational institutions and to State and local government employees.

The Equal Employment Opportunity Commission on March 31, 1972, issued revised guidelines on discrimination because of sex (reproduced as Appendix I). These guidelines set forth the interpretations which the EEOC places on the Act with respect to the following topics: sex as a bona fide occupational qualification, separate lines of progression and seniority systems, discrimination against married women, job opportunities advertising, employment agencies, pre-employment inquiries as to

sex, relationship of Title VII to the Equal Pay Act, fringe benefits, and employment policies relating to pregnancy and childbirth. The guidelines of the Equal Employment Opportunity Commission are very important as they are accorded great deference by the courts, which have the final authority to interpret the law.

Childbearing Leave

The guidelines of the Equal Employment Opportunity Commission adopted the Council's recommendation that time off required for childbirth or complications of pregnancy are for all job-related purposes temporary disabilities and should be treated as such for all purposes by employers. (See Appendix D, "Job-Related Maternity Benefits," of the Council's annual report Women In 1970.) No Federal court decisions upholding or overruling these guidelines have been made as of December 31, 1972.

The 4th and 6th Circuit Court of Appeals, however, ruled this year that school board policies requiring teachers to begin unpaid maternity leave at the end of the 5th month of pregnancy were in violation of the 14th amendment. Cohen v. Chesterfield County School Board, 4 FEP Cases 1237, (4th Cir. 1972); La Fleur v. Cleveland Board of Education, 465 F. 2d 1184 (6th Cir. 1972). The 5th Circuit held that a State agency could require a woman to begin maternity leave at the end of the 7th month. The Supreme Court has been asked to review this decision. Schattman v. Texas Employment Commission, 459 F.2d 32, rehearing denied, 459 2d 43 (5th Cir. 1972); petition for certiorari filed, 41 U.S.L.W. 3157 (Sept. 21, 1972, No. 72-474).

The California temporary disability insurance law, which excludes conditions related to pregnancy, has been challenged under the 14th amendment. Aiello v. Hansen No. C-72-1402-SW, (Three-Judge Court for N.D. Calif.). A three-judge court has been convened to review this case. The EEOC has filed a brief for the plaintiff.

The Council's paper on job-related maternity benefits, which was the first proposal to distinguish between childbearing and child rearing and the first to recognize childbearing as a temporary disability, has been very influential. The paper has been quoted in briefs for the plaintiffs in many court cases and was considered by the EEOC in adopting the guideline.

Equal Pay Act

The Equal Pay Act was extended to cover executive, professional, and administrative employees by a provision in Title IX in the Educational

Amendments of 1972, referred to above. In fiscal year 1972, a total of $14,030,889 was found due under this law to 29,002 employees, almost all of whom were women. A total of $47,573,018 has been found due as of July 1, 1972, to 112,979 employees since the Act became effective in June 1964.

In one case involving the Square D Company plant in Lexington, Kentucky, $748,000 was awarded to some 1,600 illegally underpaid women employees and former employees.

Executive Order 11246

Unlike Title VII and the Equal Pay Act, which are designed primarily to secure redress for wronged individuals, Executive Order 11246 is directed toward securing equal employment opportunity through affirmative action by the employer. Enforcement is through refusal to grant, or cancellation of, Government contracts. Federal Government contractors and subcontractors are required by this order to develop and implement written affirmative action programs to secure equal employment opportunity for women and minorities.

Order 4, providing specific guidelines for developing the affirmative action plans required by Executive Order 11246, was revised to include sex in December 1971. It applies to those contractors in non-construction industries who hold Federal contracts with at least 50 employees and $50,000 in contracts.

The Department of Health, Education and Welfare issued guidelines in October 1972 entitled "Higher Education Guidelines--Executive Order 11246" to clarify what is required of universities. Ten thousand copies have been distributed to universities and 20,000 to women's groups and other organizations and individuals.

The HEW guidelines reaffirm that goals and timetables are required as a part of affirmative action programs but make clear that quotas are not required or permitted, and describe the difference between the two. The guidelines make the following points:

— Goals are projected levels of achievement resulting from an analysis by the contractor of his deficiencies and what can reasonably be done to remedy them, given the availability of qualified minorities and women and the expected turnover in his work force.

— When used correctly, goals are an indicator of probable compliance and achievement, not a rigid or exclusive measure of performance as would be the case if quotas were required.

— If the contractor makes a genuine good faith effort and is still unable to meet the goals he has established because of changed employment conditions or for other good reasons, he has complied with the letter and the spirit of the Executive Order. If, on the other hand, good faith effort was lacking, the contractor is in noncompliance and legal sanctions will be forthcoming unless corrective action is taken.

— Nothing in the Executive Order requires that a contractor eliminate or dilute nondiscriminatory standards of educational excellence. Specifically, nothing in the affirmative action concept requires a university to employ or promote any faculty member who is less qualified than other applicants competing for that position. Affirmative action does require, however, that any standards or criteria which have had the effect of excluding women and minorities be eliminated unless such criteria are conditions of successful performance in the particular position involved.

Although results vary from region to region, there have been some significant improvements in some universities as a result of charges filed under Executive Order 11246. In one large university, salary reviews resulted in equity adjustments for 830 women, and in another large university, 138 women received salary increases. In a third university, nine women were appointed to major administrative posts, and 179 women received promotions.

In the universities in one region of the Office of Civil Rights, 84 women were hired in managerial positions in fulfillment of affirmative action goals, 2,390 in professional positions, 1,158 in technical positions, and 57 in crafts positions. In this same region there were several large backpay settlements in individual cases. At one university a woman who was wrongfully terminated because she was pregnant was reinstated and given 2-1/2 years toward her tenure obligations plus $2,400 in backpay. Another woman had salary increased from $18,000 to $28,000 per year and another was promoted and given an increase from $15,000 to $28,000 per year.

APPOINTMENTS OF WOMEN TO POLICY POSTS IN THE FEDERAL GOVERNMENT

Announcement of plans to appoint Mrs. Anne Armstrong as Counselor to the President and Mrs. Jewel Lafontant as Deputy Solicitor General climaxed a year of 54 appointments of well qualified women to key positions in the executive branch of the Federal Government. Women appointed or promoted in 1972 to full time positions at GS-16 or above are listed in Appendix J. Women appointed earlier were listed in Appendix A in our report of 1971.

In addition, two advisory committees important to the status of women were initiated. The President appointed at year's end a committee to advise the Council of Economic Advisers on the economic role of women. One of the 16 members is Mrs. Jacqueline G. Gutwillig, Chairman of the Citizens' Advisory Council on the Status of Women.

In May 1972, the Secretary of Health, Education and Welfare appointed a 19-member Advisory Committee on the Rights and Responsibilities of Women chaired by Judge Elizabeth Athanasakos.

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL CIVIL SERVICE

Public Law 92-261 of March 24, 1972, which strengthened fair employment legal sanctions applicable to private employment and State and local government, also provided greater rights for employees of the Federal Government. The equal employment opportunity program for the Federal service is administered by the Civil Service Commission.

Key provisions of the act affecting Federal agencies and employees are:*

— Federal agencies must submit EEO affirmative action plans to the Commission annually, and the Commission may require modification of a plan before final approval.

— Among other factors, each action plan must provide programs of training and education which will afford employees an

* According to Women in Action for Summer 1972, published by the Federal Women's Program, U.S. Civil Service Commission.

opportunity to acquire skills and abilities needed to compete for advancement to positions of greater responsibility.

— As part of its action plan review, the Commission will review the qualifications of all agency officials engaged in the EEO program, and assess the adequacy of personnel and resources each agency is devoting to its EEO activity.

— Employees or applicants who allege discrimination will have an opportunity to file a civil action in court if they are not satisfied with the final action taken by an agency or by the Commission's Board of Appeals and Review on their complaints. A complainant may file a civil suit if final action on his complaint is not taken by the agency within 180 days of filing, or by the Commission's Board of Appeals within 180 days of an appeal from an agency decision.

— On a finding of discrimination, the Civil Service Commission may direct whatever remedies it deems appropriate.

In 1972 women were appointed for the first time as FBI agents, sky marshals, secret service agents, and narcotics agents.

A report published in 1972 of a 1971 survey of white collar Federal employment showed a significant increase in the mid-level positions (GS-7-12)--from 20.7 percent in 1970 to 23.0 percent in 1971. At the higher levels (GS-13 and above), however, there was a slight decrease--from 3.9 percent in 1970 to 3.8 percent in 1971.

The survey showed that the Federal government had more women in the following professional occupations than employers generally:*

	Federal Government % of Women	U.S.A.** Approx. % of Women
Personnel Work	53.2	25
Physicians	7.8	7
Mathematics	22.2	10
Actuary	13.5	3
Chemists	15.1	7
Law	6.3	3

* Helene S. Markoff: "Signposts of Success," The Bureaucrat, Fall 1972.

** Occupational Outlook Handbook, 1972-3 edition, U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1700.

in the Federal Government about 15 percent of all women earn over $10,000 per annum as compared to 7 percent of all women in the private sector.

The percentage of women in the postal service had increased to 18.9 percent in April 1972 from 16.5 percent in October 1970. The postal service does not have readily available data by sex and pay levels, nor does it have breakdowns for postmaster by sex and class of office; therefore comparisons with earlier years by level cannot be made.

MILITARY SERVICE

Significant progress was made toward equality for women in the military service in 1972. The need for women in volunteer military forces, the passage by Congress of the Equal Rights Amendment, action by women in the services, and the general social climate combined to bring about this change.

The number of women in the military services increased from 32,400 in fiscal year 1971 to 34,700 in fiscal year 1972, and anticipated strength for fiscal year 1973 is 44,500. Under present plans the number of women will grow to 86,900 in fiscal year 1977.

Military job specialities open to women increased from 35 percent of all specialities in late calendar year 1971 to 81 percent in late 1972. By service, the percentage is as follows:

Army	89
Navy	100*
Air Force	98
Marine Corps	36

Within several years it is expected that these new assignment possibilities will radically change the occupational distribution, which is now very similar to that in civilian occupations, with women concentrated in clerical jobs.

The minimum mental and educational standards required for admission to the armed forces are still very much higher for women than for men, but plans are being made for changes required to comply with the Equal Rights Amendment.

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* Although all job specialities are open to women, assignments to combatant ships and aircraft are presently prohibited by law.

The Air Force opened ROTC to women in the fall of 1969, and the Army embarked on a pilot program in ten universities in the fall of 1972. The Navy, likewise, has a trial program in four schools.

Junior ROTC was opened to girls in the fall of 1972. Most of the almost 1,100 public and private high schools which have a junior program have permitted girls to enroll. It is estimated that about 7,000 girls are in the program.

RECOMMENDATIONS ON CREDIT AND MANPOWER TRAINING

The Council at its meeting of October 7, 1972, gave special attention to problems of credit and manpower training. The Council adopted the following recommendations:

Credit

Believing that the discrimination in granting credit results in part from unexamined assumptions and outmoded attitudes, rather than from deliberate policy, the Citizens' Advisory Council on the Status of Women recommends that:

(a) credit-granting institutions survey their policies and actual practices and take corrective action as needed, and

(b) community groups survey the practices of local credit-granting institutions with a view to gathering facts, stimulating awareness, correcting discriminatory practices thru consultation, and changing the laws where necessary.

Manpower Training

The Citizens' Advisory Council, therefore, urgently:

1. Reaffirms the recommendation of the President's Task Force on Women's Rights and Responsibilities that the Secretary of Labor "establish priorities as sensitive to sex discrimination as to race discrimination in manpower training programs and in referrals to training and employment.

2. Urges that the Labor Department use its full powers to require that women trainees in all programs be offered all training available to men and fully counseled as to relative pay and advantages of training for "men's" jobs. Manpower training programs must not reinforce sex-stereotyping of jobs, and

3. Recommends that the Secretary of Labor and the Secretary of Health, Education and Welfare give a high priority to vocational training programs in the household arts and to manpower training proposals for upgrading the occupation.

The releases setting forth these recommendations are reproduced in Appendices K and L.

PUBLIC SERVICE ACTIVITIES

The fast growth in 1972 of public interest in the Equal Rights Amendment and other reform efforts led to a corresponding increase in the Council's public service activities.

Members and staff were active in working for ratification of the Equal Rights Amendment in their own States and also helped in other States. They appeared on TV programs, gave newspaper interviews, testified in hearings before the legislatures, and in other ways helped to inform the public as to the impact of the Amendment.

Other activities included: efforts to remove discrimination in education at the State and local level; efforts to elect women to public office and to offices in political parties; holding of office in State and local political caucuses; speeches on maternity leave before the American Hospital Association and other groups and testimony in court cases; and testimony before a Select Committee of the British House of Lords on anti-discrimination legislation. One of our members had the great honor of serving on the Catholic Bishops' Committee on the Study of Life of Women in Church and Society and on the Council of the Laity and spoke before the World Union of Catholic Women's Organizations Study Days in Chantilly, France.

Requests for Council publications on the Equal Rights Amendment, maternity leave, and discrimination in the public schools were heavy as were requests for technical assistance from press, radio, and TV in production of programs on various aspects of status of women.

ACKNOWLEDGMENTS

We wish to publicly express our appreciation for the help received from the White House, the Office of the Vice President, and the Departments of Labor; Health, Education and Welfare; and Justice.

To all the guests who appeared before the Council, we take this opportunity to thank them publicly:

Judge Elizabeth Athanasakos, Chairman, Secretary of Health, Education and Welfare's Advisory Committee on the Rights and Responsibilities of Women

Honorable Romana Acosta Banuelos, Treasurer of the U.S.

Ms. Sharyn Campbell, J.D., Member of Consumer Finance Task Force, D.C. Commission on the Status of Women; Coordinator of Credit Counseling Project, Women's Legal Defense Fund

Ms. Anna Stina Erickson, Manpower Administration, Department of Labor

Honorable Barbara Franklin, Staff Assistant to the President

Honorable Richard Grunewald, Assistant Secretary of Labor for Employment Standards

Honorable Cynthia H. Hall, Judge, U.S. Tax Court

Dr. Lois Hanson, Executive Director, American Home Economics Association

Dr. C. Lowell Harriss, Professor of Economics, Columbia University, New York City

Honorable Elizabeth Duncan Koontz, Director, Women's Bureau, Department of Labor

Ms. Carol Kummerfeld, Assistant to the Executive Director, Civil Rights Commission

Dr. Inabel Lindsay, Dean Emeritus, Howard University School of Social Work; Member, President's Task Force on Aging; Vice Chairman, White House Conference on Aging

Honorable John Martin, U.S. Commissioner on Aging and Special Assistant to the President

Ms. Dorothy McCammon, National Council of Senior Citizens

Dr. Ida Merriam, Assistant Commissioner for Research and Statistics, Social Security Administration

Honorable Michael Moscow, Assistant Secretary of Labor for Policy Evaluation and Research

Ms. Mary Olmsted, Deputy Director of Personnel for Policy, Classification, and Evaluation, Department of State

Ms. Deanell Reece, J.D., Executive Assistant to Assistant Secretary for Manpower, Department of Labor

Ms. Gladys Rogers, Special Assistant to the Deputy Under Secretary of State, Department of State

Ms. Joy Simonson, President, Interstate Association of State Commissions on the Status of Women

Ms. Nancy Snyder, Manpower Administration, Department of Labor

Dr. Murray Weidenbaum, Department of Economics, Washington University, St. Louis, Missouri

Ms. Peggy Weinberg, Manpower Administration, Department of Labor

Dr. Marina von Neumann, Member, Council of Economic Advisers, The White House

APPENDIX A

WOMEN IN CONGRESS
(with date elected)

Bella S. Abzug	Democrat	New York	1970
Yvonne Brathwaite Burke	Democrat	California	1972
Shirley Chisholm	Democrat	New York	1968
Ella T. Grasso	Democrat	Connecticut	1970
Martha W. Griffiths	Democrat	Michigan	1954
Edith Green	Democrat	Oregon	1954
Julie Butler Hansen	Democrat	Washington	1960
Margaret M. Heckler	Republican	Massachusetts	1966
Marjorie S. Holt	Republican	Maryland	1972
Elizabeth Holtzman	Democrat	New York	1972
Barbara C. Jordan	Democrat	Texas	1972
Patsy T. Mink	Democrat	Hawaii	1964
Leonor K. Sullivan	Democrat	Missouri	1952
Patricia Schroeder	Democrat	Colorado	1972

Mrs. Lindy Boggs, Democrat from Louisiana, was elected to fill the vacancy created by the death of her husband and sworn in just before this report went to press.

APPENDIX B

Section on Women's Rights - Republican Platform - 1972

Equal Rights for Women

The Republican Party recognizes the great contributions women have made to our society as homemakers and mothers, as contributors to the community through volunteer work, and as members of the labor force in careers outside the home. We fully endorse the principle of equal rights, equal opportunities and equal responsibilities for women, and believe that progress in these areas is needed to achieve the full realization of the potentials of American women both in the home and outside the home.

We reaffirm the President's pledge earlier this year: "The Administration will . . . continue its strong efforts to open equal opportunities for women, recognizing clearly that women are often denied such opportunities today. While every woman may not want a career outside the home, every woman should have the freedom to choose whatever career she wishes—and an equal chance to pursue it."

This Administration has done more than any before it to help women of America achieve equality of opportunity.

Because of its efforts, more top-level and middle-management positions in the Federal Government are held by women than ever before. The President has appointed a woman as his special assistant in the White House, specifically charged with the recruitment of women for policy-making jobs in the United States Government. Women have also been named to high positions in the Civil Service Commission and the Department of Labor to ensure equal opportunities for employment and advancement at all levels of the Federal service.

In addition we have:

— Significantly increased resources devoted to enforcement of the Fair Labor Standards Act, providing equal pay for equal work;

— Required all firms doing business with the Government to have affirmative action plans for the hiring and promotion of women;

— Requested Congress to expand the jurisdiction of the Commission on Civil Rights to cover sex discrimination;

— Recommended and supported passage of Title IX of the Higher Education Act opposing discrimination against women in educational institutions;

— Supported the Equal Employment Opportunity Act of 1972 giving the Equal Employment Opportunity Commission enforcement power in sex discrimination cases;

— Continued our support of the Equal Rights Amendment to the Constitution, our Party being the first national party to back this Amendment.

Other factors beyond outright employer discrimination—the lack of child care facilities, for example—can limit job opportunities for women. For lower and middle income families, the President supported and signed into law a new tax provision which makes many child care expenses deductible for working parents. Part of the President's recent welfare reform proposal would provide comprehensive day care services so that women on welfare can work.

We believe the primary responsibility for a child's care and upbringing lies with the family. However, we recognize that for economic and many other reasons many parents require assistance in the care of their children.

To help meet this need, we favor the development of publicly or privately run, voluntary, comprehensive, quality day care services, locally controlled but federally assisted, with the requirement that the recipients of these services will pay their fair share of the costs according to their ability.

We oppose ill-considered proposals, incapable of being administered effectively, which would heavily engage the Federal Government in this area.

To continue progress for women's rights, we will work toward:

— Ratification of the Equal Rights Amendment.

— Appointment of women to highest level positions in the Federal Government, including the Cabinet and the Supreme Court.

— Equal pay for equal work.

— Elimination of discrimination against women at all levels in Federal Government.

— Elimination of discrimination against women in the criminal justice system, in sentencing, rehabilitation and prison facilities.

— Increased opportunities for the part-time employment of women, and expanded training programs for women who want to re-enter the labor force.

— Elimination of economic discrimination against women in credit, mortgage, insurance, property, rental and finance contracts.

We pledge vigorous enforcement of all Federal statutes and executive orders barring job discrimination on the basis of sex.

We are proud of the contributions made by women to better government. We regard the active involvement of women on all levels of the political process, from precinct to national status, as of great importance to our country. The Republican Party welcomes and encourages theit maximum participation.

1972 Republican Platform Committee

APPENDIX B

Section on Women's Rights - Democratic Platform - 1972

Rights of Women

Women historically have been denied a full voice in the evolution of the political and social institutions of this country and are therefore allied with all under-represented groups in a common desire to form a more humane and compassionate society. The Democratic Party pledges the following:

- A priority effort to ratify the Equal Rights Amendment;

- Elimination of discrimination against women in public accomodations and public facilities, public education and in all federally-assisted programs and federally-contracted employment;

- Extension of the jurisdiction of the Civil Rights Commission to include denial of civil rights on the basis of sex;

- Full enforcement of all federal statutes and executive laws barring job discrimination on the basis of sex, giving the Equal Employment Opportunity Commission adequate staff and resources and power to issue cease-and-desist orders promptly;

- Elimination of discriminatory features of criminal laws and administration;

- Increased efforts to open educational opportunities at all levels, eliminating discrimination against women in access to education, tenure, promotion and salary;

- Guarantee that all training programs are made more equitable, both in terms of the numbers of women involved and the job opportunities provided; jobs must be available on the basis of skill, not sex;

- Availability of maternity benefits to all working women; temporary disability benefits should cover pregnancy, childbirth, miscarriage and recovery;

- Elimination of all tax inequities that affect women and children, such as higher taxes for single women;

— Amendment of the Social Security Act to provide equitable retirement benefits for families with working wives, widows, women heads of households and their children;

— Amendment of the Internal Revenue Code to permit working families to deduct from gross income as a business expense, housekeeping and child care costs;

— Equality for women on credit, mortgage, insurance, property, rental and finance contracts;

— Extension of the Equal Pay Act to all workers, with amendment to read "equal pay for comparable work;"

— Appointment of women to positions of top responsibility in all branches of the federal government to achieve an equitable ratio of women and men. Such positions include Cabinet members, agancy and division heads and Supreme Court Justices; inclusion of women advisors in equitable ratios on all government studies, commissions and hearings; and

— Laws authorizing federal grants on a matching basis for financing State Commissions on the Status of Women.

1972 Democratic Platform Committee

States Ratifying the Equal Rights Amendment As of End of 1972

Alaska
California
Colorado
Delaware
Hawaii
Idaho
Iowa
Kansas
Kentucky
Maryland
Massachusetts
Michigan
Nebraska
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Tennessee
Texas
West Virginia
Wisconsin

As of the date this report went to press, the following additional States had ratified:

Connecticut
Minnesota
New Mexico
Oregon
South Dakota
Vermont
Washington
Wyoming

Thirty-eight States must ratify the Amendment by March 22, 1979 for it to become part of the Constitution.

Only Equal Rights Amendment Will Promptly End Prison Sentence Discrimination Because of Sex

Laws providing longer prison sentences for women than men (and vice versa) are very persuasive examples of the urgent need for an equal rights amendment that permits no distinctions based on sex. While relatively few women are affected by discrimination in the criminal law, the nature of the attitudes toward women underlying all forms of discrimination are exposed in these cases. Since women's organizations have not had the resources to research systematically all State laws, we are unable to compile a complete list of all instances of such discriminations.

The most recent examples of cases coming to our attention are New Jersey and Maine cases, in which the courts failed to find unconstitutional laws providing disparate sentencing for men and women convicted of the same offense. State v. Costello, 59 N.J. 334, 282 A. 2d 748(1971); Wark v. State, ___Me.___, 266A. 2d 62(1970), cert. denied 400 U.S. 952, 27 L. Ed. 2d 259(1970).

Mary A. Costello, the defendant in the New Jersey case, pled guilty to bookmaking, the keeping of a gambling resort, and possession of paper, documents, slips or memoranda pertaining to the business of lottery or lottery policy.

Judge Hall of the New Jersey Supreme Court summed up the differences in treatment in the following excerpt from the opinion:

> Defendant could be held on the bookmaking conviction for as long as five years (although it is most unlikely that she would be). A first offender male, convicted of the same crime, would likely receive a state prison sentence of not less than one nor more than two years. He could not be confined for more than two years, less good behavior and work credits, and, assuming maximum such credits, would be eligible for parole, and, considering the nature of the offense, quite likely paroled in 4 months and 28 days.

Judge Hall was unwilling to declare the New Jersey law unconstitutional on its face, as the Pennsylvania Supreme Court and the Federal District Court in Connecticut had done with respect to similar laws in these States, and commented further that:

> ...there are decisions in other jurisdictions concluding that disparate legislative sentencing schemes based upon sex are

not constitutionally invalid State v. Heitman, 105 Kan. 139, 181 P. 630(1919), 8 A.L.R. 848; Platt v. Commonwealth, 256 Mass. 539, 152 N.E. 914(1926); Ex parte Brady, 116 Ohio St. 512, 157 N.E. 69(1927); Ex parte Gosselin, 141 Me. 412, 44 A. 2d 882(1945), appeal dismissed 328 U.S. 817, 90 L.Ed. 1599(1946). Cf. Wark v. State, ___Me. ___, 226 A 2d 62(1970), cert. denied, 400 U.S. 952, 27 L.Ed. 2d 259 (1970). These cases, generally speaking, reasoned that the legislature could legitimately conclude that female criminals were basically different from male criminals, that they were more amenable and responsive to rehabilitation and reform--which might, however, require a longer period of confinement in a different type of institution--and that therefore the legislature could validly differentiate between sexes with respect to the length of incarceration and the method of the determination thereof.

The following excerpt from Judge Hall's opinion further indicates his reluctance to find the law invalid under the 14th amendment:

> However, at oral argument her counsel further stated that defendant was now ready and willing to cooperate with the prosecuting authorities by disclosing information as to those at a higher level with whom she was connected. We understand this offer had not previously been made. Ivan (33 N.J. at 199, 203) intimates that, where such information is furnished by a convicted gambling operator at a lower level which is full, truthful and of value in assisting the pursuit of "higher-ups" in organized crime by law enforcement authorities, this fact should be taken into account by a sentencing judge in determining the nature of the punishment. In such a situation the judge might properly decide that a custodial sentence should not be imposed on a first offender. Although such an offer would not ordinarily be considered if first made at the appellate stage, we are of the view, since the case is being remanded for another reason, that defendant should have the right to make a motion to the trial court, within 20 days from the date of this opinion, R. 3:21-10, for reconsideration of the sentence on this ground. If the motion and disclosure are made, the prosecutor should promptly report the nature and result of the disclosure to the trial court, after which the sentence may be reconsidered in the light thereof under the cited rule. We should add that if such reconsideration results in a new sentence other than commitment to the Correctional Institution for Women, the issue of the constitutionality of the statutory female sentencing scheme will thereby

become moot and the determination of that question need not be further pursued.

Mrs. Costello has been resentenced under a different statute to a term in the county jail, making this case moot. Her lawyers contend that the new sentence is improper and have filed another appeal in the Appellate Division.

In the Maine case Mr. Wark had been sentenced to an additional term of from six to twelve years for escaping from a Maine prison farm, whereas a woman convicted of escaping from the women's reformatory would have been subject to a maximum sentence of no more than eleven months.

The Supreme Court of Maine concluded "that a classification based on sex under these circumstances is neither arbitrary nor unreasonable but is a proper exercise of legislative discretion which in no way violates the constitutional right to equal protection of the law." The U.S. Supreme Court refused certiorari (citation on p. 1). For a discussion of the Maine court's convoluted reasoning see "Sex Discrimination by Law: A study in Judicial Perspective" by Johnson and Knapp, 46 N.Y. U.L. Rev. 675, 729(Oct. 1971).

Several instances of sex discrimination in laws relating to juveniles have come to our attention recently. Discrimination under New York's juvenile laws are discussed in a New York Law Forum article "Equal Protection for Juvenile Girls in Need of Supervision in New York State" by Sarah Gold. 17 N.Y.L.F. 570(1971).

Lamb v. Brown, pending in the 10th circuit court of appeals, challenges the application of the Oklahoma juvenile law to young men until age 16 while covering young women until age 18. No. 71-1355, U.S. Court of Appeals, 10th Circuit; also see Lamb v. State, 475 P. 2d 829(1971).

MEMORANDUM: The Equal Rights Amendment and Senator Ervin's Reference to the Yale Law Journal article in his Minority Report

Senator Ervin's minority views, stated in the Senate Report on the Equal Rights Amendment (Report No. 92-689, 92d Congress, 2d Session), have been widely used to discredit the Amendment by misinterpretation of its meaning. Senator Ervin supports his interpretations by excerpts from the April 1971 Yale Law Journal, (Vol. 80, No. 5, pp. 871-985), which has been widely used by the proponents of the Amendment. Many of these excerpts mislead the reader by quoting only parts of sentences and sections of paragraphs.

Dr. Virginia J. Cyrus has prepared a detailed comparison of the Senator's excerpts and the full wording of the Journal article. We express our gratitude and appreciation to her for her extensive research and the volunteer contribution that made this paper possible. Dr. Cyrus is active in the Arizona Women's Political Caucus and the National Organization for Women. She was awarded a Ph. D. in English by the University of Washington and is an instructor at Maricope Technical College and Phoenix College.

Dr. Cyrus has summarized her findings as follows:

> Since Senator Ervin opposes the Amendment, it is natural that his selections dwell only on the negative effects of the Amendment. However, in his enthusiasm for his point of view, he is misleading. He lifts phrases from context, thus distorting, misconstruing or even inverting their meanings; he omits conditions, specifications and clarifications that greatly alter the area or significance of the effect under discussion; and his occasional inaccuracies or misquotations consistently err toward the negative.

The Council is happy to furnish you with this paper and hopes it will help to clarify the meaning of the Equal Rights Amendment.

Sincerely,

Jacqueline G. Gutwillig

JACQUELINE G. GUTWILLIG
Chairman

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN
Room 1336, Department of Labor Building
Washington, D.C. 20210

The Equal Rights Amendment--Senator Ervin's Minority Report and the Yale Law Journal

In the following comparison, points in Senator Ervin's presentation are given in totality, exactly as they appear in the minority report, including typographical errors for which he cannot be held responsible. In the correlative passages from the Yale Law Journal, (Vol. 80, No. 5, pp. 871-985), all sentences are quoted in their entirety, and words and phrases used in Senator Ervin's excerpts are underlined. Differences between the two speak for themselves.

MILITARY

Senator Ervin (pp. 38-39 Sen. Rep.):	Yale Law Journal:
5. "These changes will require a radical restructuring of the military's views of women." (p. 969)	P. 969: "These changes will require a radical restructuring of the military's view of women, which until now has been a narrow and stereotypical one."
6. "The Equal Rights Amendment greatly hasten this process and will require the military to see women as it sees men." (p. 970)	P. 970: "The Equal Rights Amendment will greatly hasten this process and will require the military to see women as it sees men--as a diverse group of individuals, married and unmarried, with and without children, possessing or desiring to acquire many different skills, and performing many varied kinds of jobs."
12. Deferement policy "could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female would be deferred." (p. 973)	P. 973: "There are several permissible alternatives to these deferment provisions under the Equal Rights Amendment. Deferment might be extended to women, so that neither parent in a family with children would be drafted. Alternatively, the section could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female, would be deferred. A third possibility would be to grant a deferment to the individual in the couple who is responsible for child care. The couple could decide which one was going to perform this function, and the other member would be liable for service. In a one-parent household Congress would probably defer the parent."

16. "Under the Equal Rights Amendment the WAC would be abolished." (p. 976)

P. 976: "Almost all of the women in the Army are members of the Army Nurse Corps or the Women's Army Corps. Although the Army Nurse Corps is organized along job lines, the WAC has no unifying principle except that its members are women. It thus stands as a symbol of the unwillingness of the Army to abandon distinctions based on sex. Under the Equal Rights Amendment the WAC would be abolished and women assigned to other corps on the basis of their skills."

17. "women are physically as able as men to perform many jobs classified as combat duty, such as piloting an airplane or engaging in naval operations...there is no reason to prevent women from doing these jobs in combat zones." (p. 977)

P. 977: "Combat soldiers make up only a small percentage of military personnel. Even in combat zones many jobs of logistic and administrative support are no different or more difficult than the work done in non-combat zones. Thirty years ago, women were found capable of filling over three-quarters of all Army job classifications, and there is no reason to prevent them from doing these jobs in combat zones. The issue of assigning women to actual combat duty, therefore involves a relatively small segment of total military assignments.

"Opponents of the Amendment claim that women are physically incapable of performing combat duty. The facts do not support this conclusion. The effectiveness of the modern soldier is due more to equipment and training than to individual strength. Training and combat may require the carrying of loads weighing 40 to 50 pounds, but many, if not most, women in this country are fully able to do that. And women are physically as able as men to perform many jobs classified as combat duty, such as piloting an airplane or engaging in naval operations. In order to screen out those of both sexes incapable of combat service, it will be permissible to administer a test to measure ability to do the requisite physical tasks."

18. "no one would suggest that ... women who serve can avoid the possibility of physical harm and assult. But it is important to remember that all combat is dangerous, degrading and dehumanizing." (1. 977)

P. 977: "Finally, as to the concern over women engaging in the actual process of killing, no one would suggest that combat service is pleasant or that the women who serve can avoid the possibility of physical harm and assult. But it is important to remember that all combat is dangerous, degrading and dehumanizing. That is true for all participants. As between brutalizing our young men and brutalizing our young women there is little to choose."

19. "Male officers are provided a dependents' allowance based on their grade and the number of dependents. . ." The Equal Rights Amendment will recognize "the husband of a female officer . . . as a dependent." (p. 978)

P. 978: "On the other hand the rules on dependents' allowances, in-service housing and medical benefits discriminate against women. Male officers are provided quarters on base, or a basic quarters allowance for their dependents if they live off base; male officers also receive a dependents' allowance based on their grade and the number of dependents, regardless of any money the officer's wife may earn. The husband of a female officer, however, is not recognized as a dependent unless he is physically or mentally incapable of supporting himself and is dependent on his wife for more than half of his support."

CRIMINAL LAW

Senator Ervin (pp. 39-40 Sen. Rep.):

1. "Courts faced with criminal laws which do not apply equally to men and women would be likely to invalidate the laws rather than extending or rewriting them to apply to women and men alike." (p. 966)

Yale Law Journal

P. 966: "Courts faced with criminal laws which do not apply equally to men and women would be likely to invalidate the laws rather than extending or rewriting them to apply to women and men alike. As a result, legislatures would need to devote attention to revising their penal laws in order to bring them into conformity with the Equal Rights Amendment. While necessary, this should not be an unduly burdensom requirement."

2. "courts will most likely invalidate sodomy or adultry laws that contain sex discriminatory provisions, instead of solving the consistutional problems by extending them to cover men and women alike." (p. 962)

P. 962: "Following the rule of narrow construction of criminal statutes, courts will most likely invalidate sodomy or adultry laws that contain sex discriminatory provisions, instead of solving the constitutional problems by extending them to cover men and women alike. . . . However, a legislature intent on retaining criminal penalties for sodomous or adulterous conduct could easily bring the laws into line with the Equal Rights Amendment by extending them to apply equally to men and women."

3. "seduction laws, statutory rape laws, laws prohibiting obscene language in the presence of women, prostitution and 'manifest danger' laws. . . The Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social stereotypes." (p. 954)

P. 954: "Many of the laws, such as seduction laws, statutory rape laws, and laws prohibiting obscene language in the presence of women, embody a stereotype of women as frail and weak-willed in relation to sexual activity. Others, such as the prostitution and 'manifest danger' laws, display a contradictory social stereotype: women who engage in certain kinds of sexual activity are considered more evil and depraved than men who engage in the same conduct. The Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social stereotypes. Courts would generally strike down these laws rather than extend them to men because of the rule of strict construction of penal laws, described above. Legislatures, of course, would be able to extend or re-enact any laws about sex offenses to apply equally to men and to women. A few types of criminal statutes, most notably rape laws, may be justified as deriving their sex bias from physical realities. Here the courts would closely scrutinize the laws to determine whether they fall within the scope of the exception for unique physical characteristics."

5. "To be sure, the singling out of women probably reflects sociological reality . . . Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard. . ." (p. 958)

P. 958: "To be sure, the singling out of women probably reflects sociological reality: in this society, young women, who learn both that marriage is the most important goal for them and that they may pursue it only passively, are undoubtedly more susceptible than young men to the lures of persons who want to take sexual advantage of them. Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard, and requires such statutes to be framed in terms of the general human need for protection rather than in terms of crude sexual categories."

6. "adultery laws also contain sex discriminatory provisions which would be impermissible under the Equal Rights Amendment." (p. 961)

P. 961: "A few adultery laws also contain sex discriminatory provisions which would be impermissible under the Equal Rights Amendment. Roman law defined adultery as sexual intercourse with another man's wife. Some states reflect this one-sided view by failing to define intercourse between a married man and a single woman as adultery. In Massachusetts and Oregon, an unmarried woman cannot be punished for relations with a married man, although an unmarried man is criminally liable if he participates in an adulterous relationship with a married woman. Discrepancies like these in the liability of men and women derive from social attitudes toward the relative offensiveness of extramarital activity by men and by women."

8. "Just as the Equal Rights Amendment would invalidate prostitution laws which apply to women only, so the ERA would require invalidation of laws specially designed to protect women from being forced into prostitution." (p. 964)

P. 964-965: "Just as the Equal Rights Amendment would invalidate prostitution laws which apply to women only, so it would require invalidation of laws specially designed to protect women from being forced into prostitution. . . . Congress could easily bring the Mann Act into conformity with the Equal Rights Amendment by substituting the word 'person' for the words 'woman or girl' in the statute."

DOMESTIC RELATIONS LAWS

Senator Ervin (pp. 41-42 Sen. Rep.):

1. "The Equal Rights Amendment, continuing this trend, would prohibit dictating different roles for men and women within the family on the basis of their sex." (p. 953)

4. "The Amendment would also [sic] prohibit states from requiring that a child's last name be the same as his or her father's, or from requiring that a child's last name be the same as his or her mother's." (p. 941)

5. "In ninety percent of custody cases the mother is awarded the custody. The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent." (p. 953)

6. "physical capacity to bear children can no longer justify a different statutory marriage age for men and women." (p. 939)

Yale Law Journal:

P. 953-954: "The present legal structure of domestic relations represents the incorporation into law of social and religious views of the proper roles for men and women with respect to family life. Changing social attitudes and economic experiences are already breaking down these rigid stereotypes. The Equal Rights Amendment, continuing this trend, would prohibit dictating different roles for men and women within the family on the basis of their sex. Most of the legal changes required by the Amendment would leave couples free to allocate privileges and responsibilities between themselves according to their own individual preferences and capacities."

P. 941: "The Amendment would only prohibit the states from requiring that a child's last name be the same as his or her father's, or from requiring that a child's last name be the same as his or her mother's."

P. 953: "The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent. Given present social realities and subconscious values of judges, mothers would undoubtedly continue to be awarded custody in the preponderance of situations, but the black letter law would no longer weight the balance in this direction."

P. 939: "Since the minimum marriage age in all states is now well above the normal age of puberty, physical capacity to bear children can no longer justify a different statutory marriage age for men and women."

10. "A husband would no longer have grounds for divorce in a wife's unjustifiable refusal to follow him to a new home." (p. 942)

12. "In all states husbands are primarily liable for the support of their wives and children . . .the child support sections of the criminal nonsupport laws . . .could not be sustained where only the male is liable for support." (p. 944 and 945)

P. 942: "A husband would no longer have grounds for divorce in a wife's unjustifiable refusal to follow him to a new home, unless the state also permitted the wife to sue for divorce if her husband unjustifiably refused to accompany her in a move."

P. 944-945: "In all states husbands are primarily liable for the support of their wives and children, although the details of this liability and the possible defenses vary. . . .

"The child-support sections of the criminal nonsupport laws would continue to be valid under the Equal Rights Amendment in any jurisdiction where they apply equally to mothers and fathers. However, the sections of the laws dealing with interspousal duty of support could not be sustained where only the male is liable for support. . . .

"With regard to civil enforcement of support laws, courts could take a more flexible approach. The Equal Rights Amendment would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex. However, a court could equalize the civil law by extending the duty of support to women. With regard to child support this is already the rule in Iowa, where father and mother are under the same legal duty to support the children.

"Alarmists claim that the Equal Rights Amendment would change the institution of the family as we know it by weakening the husband's duty of marital support in an ongoing marriage. This concern is based on a misunderstanding of the role laws about support actually play. Many courts flatly refuse to enter a support decree when the husband and wife are living together. In most such cases the husband, as head of the family, is free to determine how much or how little of his property his wife and children will receive."

15. "Under the Equal Rights amendment, laws which . . . favor the husband as manager (of community property) in any way, would not be valid." (p. 947)

P. 947: "Under the Equal Rights Amendment, laws which vest management of the community property in the husband alone, or favor the husband as manager in any way, would not be valid. In the absence of new legislation, the courts would leave decisions about disposition of the community property to be made jointly by husband and wife. This would be consistent with the general judicial preference to allow married couples to work matters out between themselves."

17. "a court could invalidate (many grounds for divorce) without doing any serious harm to the overall structure of the states' divorce laws . . . These are pregnancy by a man other than husband at time of marriage, nonsupport, alcoholism of husband, wife's unchaste behavior, husband's vagrancy, wife's refusal to move with husband without reasonable cause, wife a prostitute before marriage, indignities by husband to wife's person, and willful neglect by husband." (p. 950)

P. 949-950: "In the past many grounds for divorce were highly sex discriminatory; today only a few apply solely to one sex or the other. These are nonage, pregnancy by a man other than husband at time of marriage, nonsupport, alcoholism of husband if and only if accompanied by wasting of his estate to the detriment of his wife and children, wife's unchaste behavior (without actual proof of adultery), husband's vagrancy, wife's absence from state for ten years without husband's consent, wife's refusal to move with husband without reasonable cause, wife a prostitute before marriage, husband a drug addict, indignities by husband to wife's person, and willful neglect by husband.

"Except for nonsupport and pregnancy, all the sex discriminatory grounds for divorce listed above are anachronisms, surviving in only one or two states, and are not deserving of extended discussion here. In each instance, a court could invalidate such a provision without doing any serious harm to the overall structure of the state's divorce law. On the other hand, the court could also extend the law to the opposite sex without risking serious criticism that it was usurping legislative authority. Even without the pressure of the Equal Rights Amendment, these provisions are likely to be dropped or extended to the opposite sex in the course of divorce law reform."

20. "The Equal Rights Amendment would not require that alimony be abolished but only that it be available equally to husbands and wives." (p. 952)

P. 952: "The Equal Rights Amendment would not require that alimony be abolished but only that it be available equally to husbands and wives. . . . Alimony laws could be written to grant special protection to a spouse who had been out of the labor force for a long time in order to make a non-compensated contribution to the family's well-being."

21. "the laws could provide support payments for a parent with custody of a young child who stays home to care for that child so long as there was no legal presumption that the parent granted custody should be the mother." (p. 952)

P. 952: "Similarly the laws could provide support payments for a parent with custody of a young child who stays at home to care for that child, so long as there was no legal presumption that the parent granted custody should be the mother. In short, as long as the law was written in terms of parental function, marital contribution, and ability to pay, rather than the sex of the spouse, it would not violate the Equal Rights Amendment."

PROTECTIVE LABOR LEGISLATION

Senator Ervin (p. 44 Sen. Rep.):

1. "Under the Equal Rights Amendment, courts are thus not likely to find any justification for the continuance of laws which exclude women from certain occupations." (p. 929)

2. "Laws which require employers to impose leave on pregnant employees for a specified period before and after childbirth, without providing job security or retention of accrued benefits, such as seniority credits . . . would fall" (p. 929) The article cites as an example which will be struck down in every state, "a school board regulation imposing maternity leave at least four months prior to the expected birth of her child." (p. 931)

Yale Law Journal:

P. 929: "Furthermore, it is difficult to imagine an occupational hazard which is based on a physical characteristic unique to one sex; if the occupation is dangerous, it is dangerous to both sexes. Under the Equal Rights Amendment, courts are thus not likely to find any justification for the continuance of laws which exclude women from certain occupations. Legislatures which are concerned with real hazards in certain jobs will have to enact sex-neutral protections."

P. 929: "Laws which require employers to impose leave on pregnant employee for a specified period before and after childbirth, without providing job security or retention of accrued benefits, such as seniority credits, are similarly exclusionary. Seven jurisdictions have enacted such restrictions into law; the stage of pregnancy at which mandatory leave is imposed varies between three weeks to four months before expected delivery."
THE WORDS "would fall" APPEAR ON p. 931.
Pp. 931-932: "A similar state regulation was struck down in Cohen v. Chesterfield County School Board, in which a female teacher challenged a school board regulation imposing maternity leave at least four months prior to the expected birth of her child. The district court reviewed the supposed medical and administrative reasons for the school board's policy, and found them to have no empirical basis or persuasive force. . . . The court concluded that '[b]asically, the four month requirement...was arbitrarily selected,' and that 'since no two pregnancies are alike, decisions of when a pregnant teacher should discontinue working are matters best left up to the woman and her doctor.' More broadly, the court held that 'pregnancy, though unique to women, is like other medical conditions, and the failure to treat it as such amounts to discrimination which is without rational basis, and therefore is violative of the Equal Protection Clause of the Fourteenth Amendment.'"

3. "There is little reason to doubt, therefore, that courts will invalidate weightlifting regulations for women under the Equal Rights Amendment." (p. 935)	Pp. 934-935: "If, under Title VII, one cannot prove by factual evidence that 'all or substantially all women are unable to perform a given job safely and efficiently,' one almost certainly cannot prove by factual evidence that average weightlifting differences between men and women are caused by a unique physical characteristic possessed by all or some women and no men. There is little reason to doubt, therefore, that courts will invalidate weightlifting regulations for women under the Equal Rights Amendment as well as under Title VII."
5. "The courts are likely to . . . equalizing both sexes under the Equal Rights Amendment by invalidating (a law protecting women from coerced overtime.)" (p. 936)	P. 936: "Hence, while a law protecting both men and women from coerced overtime is desirable, the courts are likely to leave the matter to legislative decision, meanwhile equalizing both sexes under the Equal Rights Amendment by invalidating the law. This would seem to be one area, therefore, in which legislative attention between ratification and the effective date of the Amendment would be important."
6. "Laws which restrict or regulate working conditions would probably be invalidated." (p. 936)	P. 936: "In general, labor legislation which confers clear benefits upon women would be extended to men. Laws which are plainly exclusionary would be invalidated. Laws which restrict or regulate working conditions would probably be invalidated, leaving the process of general or functional regulation to the legislatures."

MISCELLANEOUS

Senator Ervin (p. 45 Sen. Rep.):

2. "It is obvious that the marginal relationship of the unique physical characteristics of pregnancy to the problem of absenteeism would require invalidation . . . [of] a government regulation to reduce absenteeism by barring women from certain jobs."
NO PAGE CITED

Yale Law Journal:

P. 896: "How the courts would balance each of these factors is difficult to predict in advance of actual adjudication, although in the example given it is obvious that the combined weight of the overbroad classification by sex and the marginal relationship of the unique physical characteristic of pregnancy to the problem of absenteeism would require invalidation of the regulation. In any case, all of these considerations are of the kind that courts constantly deal with in similar cases where reliance upon a legitimate factor is used to achieve illegitimate ends. And however the boarderline cases are resolved, the margin of error is not likely to be so large as to jeopardize the basic principle."
WORDS FOLLOWING ELLIPSES APPEAR IN PART ON P. 894: "These factors can be explained most easily in terms of a hypothetical case: a government regulation to reduce absenteeism at policy-making levels by barring women from certain jobs."

3. Men will get extensive leave for child rearing because "if only women can get extensive leave for child rearing it becomes economically impossible for men to stay at home to care for children while their wives work." (p. 897)

P. 897: "Unfortunately, legislatures have traditionally used sex classifications as shorthand for other classifications which, although they are more precise, are also somewhat more difficult to administer. Because sex classifications were acceptable, they were often employed merely because members of one sex actually or apparently predominated in the smaller group to whom the law was really directed, whether or not a narrower more equitable classification was practicable. This common practice reinforced the pre-existing majority of one sex in the regulated or protected activity; for example, if only women can get extensive leaves for child rearing, it becomes economically impossible for men to stay home to care for children while their wives work. Hence sex classifications begin to seem both natural and essential to sound legislation in many areas of public concern."

4. "A rule allowing sick leave only to mothers when a member of their household is sick is a prohibited sex classification." (p. 898) (This sentence does not appear on p. 898.)

P. 898: "Likewise, a rule allowing workers to take sick leave when any member of their household was sick would be an appropriate functional classification. Unlike a rule allowing such leave only to mothers, which denies parents the opportunity to choose which of them will stay home, the functional rule is neutral, allowing workers to choose whether they wish to follow traditional sex-roles or share child rearing and other familial responsibilities. A system of functional classification may thus be utilized in ways which achieve important social objectives without discriminating against individuals on account of their sex."

Prepared for the Citizens' Advisory Council on the Status of Women

By

Dr. Virginia J. Cyrus
Phoenix, Arizona

Remarks of
Jacqueline G. Gutwillig, Chairman
Citizens' Advisory Council on the Status of Women

Equal Rights Amendment Jubilee - Ratification Assembly

Washington, D. C.
May 10, 1972

This has been a year of advances for women.....from top level Government to employers of 15 persons.....and the day of March 22, 1972, will be overshadowed only on the day the 38th State ratifies the Equal Rights Amendment.

The first project undertaken by the Citizens' Advisory Council on the Status of Women, President Nixon's appointees, was endorsement of the Equal Rights Amendment. Shortly thereafter the Council published a memorandum setting forth the legal doctrine which has since been adopted by the leading proponents and the Senate Judiciary Committee.

We have published other papers to help clarify the intent and effects of the ERA, all of which are available to you. Also I testified at the Senate Equal Rights Amendment hearing where I stressed the effect on women of the military and draft aspects and that is what I have been asked to discuss with you today--for background as we are about to work with State legislators for ratification.

Under the Equal Rights Amendment women, of course, will be subject to military service. This has been the chief objection to the ERA raised by the opponents. I am a Lt. Colonel, in the Women's Army Corps, US Army, Retired, I have served as Executive Officer in Psychological Warfare Division of Supreme Headquarters Allied Expeditionary Forces in England, France and Germany. I was awarded the bronze star medal and was decorated an Honorary Member of The Most Excellent Order of the British Empire for meritorious service. Later I served as a Reserve Officer and Logistical Staff Officer in the Logistics Division of the US Army General Staff in the Pentagon. I relate this background only to establish that I can speak from personal military experience.

Serving our country's armed forces certainly is not necessarily a handicap. Indeed my personal belief is that most persons benefit from it. The military not only provides an opportunity for young people to serve proudly but also provides an opportunity to prepare themselves to be better and more effective citizens. I received advanced training at Command and General Staff College and achieved a better understanding of governmental affairs during my years of duty. I know I am a better contributor as a citizen as a result of my military service.

Military service would have great advantages for young women with limited opportunities, as it has for many generations benefited young men with limited opportunities. The fact that men have been moving out of poverty while women have not is certainly due in part to military service. Vocational training, medical care, travel and a wider range of associates are some of the positive aspects. After discharge, education and housing benefits and preference in employment give the veteran additional advantages.

For example, since June 1, 1966, the Veterans Administration reports that 3,134,496 men have used the educational benefits of the GI Bill. Such benefits have been available to only 33,706 females. The small number of women is due, of course, to the small number of women in the service. Women now constitute approximately 1.6 percent of military personnel.

Women today cannot even volunteer for military service unless they are high school graduates or equivalent and must meet higher standards in other respects than men. They must provide character references, and WACS must have a personal interview. They are restricted in the kinds of occupations open to them, even more so than in World War II. According to a study by the Army/Navy/Air Force Times women are eligible for only about one-third of the Army's 460 enlisted jobs and about 60 of these jobs can be held only during a period of mobilization, which does not include the Vietnam era.

Under the Equal Rights Amendment women would have to be admitted to the services under the same standards as men and could not be denied assignment to positions and training solely because they are women.

Now consider that our country is moving in the direction of a volunteer force.... a Presidential commission headed by former Secretary of Defense Thomas Gates, assigned to study the feasibility of an all volunteer armed force, concluded that the nation's interests will be better served by an all volunteer force, supported by an effective stand-by draft....that steps should be taken promptly to move in this direction. The commission was satisfied that a volunteer force will not jeopardize national security, and that it will have a beneficial effect on the military as well as the rest of our society.

The army has said that enlistments and reenlistments must more than double if the army is to reach the goal of "zero-draft" by July 1, 1973, which is the goal established by President Nixon.

"There is no way the military can convert to a volunteer force in today's labor market without increasing the proportion of women in the services." This is a statement by Professor Ross J. Wilhelm, a University of Michigan business economist. He also says, "Over the coming years it is a certainity that if

the ....military is to become a volunteer force it can be expected that a large proportion of the new recruits....will have to be women."

But, we still must face up to the draft, because even if a volunteer service is just ahead, there is always the possibility of a draft in a national emergency.

However, the draft now recognizes the difference in physical abilities among all persons and placed them as much as possible, in assignments appropriate to their skills.

The Equal Rights Amendment would require that both men and women who meet the physical and other requirements, and who are not exempt or deferred by law, and who are within the draftable age group, would be subject to the draft.

"...The fear that mothers will be conscripted from their children into military service if the Equal Rights Amendment is ratified, is totally and completely unfounded. Congress will retain ample power to create legitimate sex-neutral exemptions from compulsory service. For example, Congress might well decide to exempt all parents of children under 18 from the draft." This is a quote from the Senate Judiciary Report, which will be the chief source for determining the intent of Congress.

The Intercollegiate Association of Women Students, which is the largest organization of undergraduate women, has fully discussed the Equal Rights Amendment and the draft, in regional conferences, in hearings at the University of Kansas, and in their 1971 National Conference. They endorsed the ERA and specifically endorsed the drafting of women when the national welfare required the drafting of men. This group has been one of the most effective advocates of the ERA. Most young women with whom I have discussed this subject, although not eager for military service feel it is only fair for young women to be drafted if young men are.

The women s organizations most active in seeking equal rights, including this student association and our own Citizens Advisory Council on the Status of Women, after mature consideration decided over a year ago with the concurrence of the friendly constitutional experts in and outside the organizations, that an Equal Rights Amendment with the draft exception...or any other exception...was not acceptable. We concluded that equality of rights is not attainable without equality of responsibility. Whatever reasoning could be offered for a draft exception would be used by courts and legislatures to justify further exceptions to the principle of equality. Preference for veterans in training, education, and employment could be used to evade the intent of the Equal Rights Amendment if women are excluded from military service.

With respect to combat, the Senate Judiciary Report, which--and I repeat--will be the chief source for determining the intent of Congress, while not speaking forthrightly on this subject says in these sentences:

> ...Once in the service, women, like men, would be assigned to various duties by their commanders, depending on their qualifications and the service's needs....

Also the report says:

> ...They [women] have demonstrated that they can perform admirably in many capacities in the armed forces. But the Government would not require that women serve where they are not fitted just as men (are not required to serve where not fitted).

Congressman Edwards, who chaired the House Subcommittee hearings on the Equal Rights Amendment, put it this way:

> Women in the military could be assigned to serve wherever their skills or talents were applicable and needed, in the discretion of the command, as men are at present....

I shall stick my neck out on this issue and state that I believe that at least young women who want combat service could not be denied it on the basis of sex, but could be on the basis of qualifications. The law now prohibits combat assignments but there are career women officers now in the service who are seeking training as pilots and navigation officers. We, of course, have always had nurses in the front lines and on board ship in areas of great danger.

Here is a story of a nurse who was awarded the distinguished service cross. She was in the front lines in Belguim during World War I. She was under fire from German bombs, she says when asked if she had done anything exceptional--its just that:

> ...Our hospital was bombed by the Germans....
>
> ...We just moved as ordered....
>
> We moved in a truck and slept in a tent. We performed only emergency operations, but we always operated under shell fire....

So there is nothing so new or radical about being in combat!

If the courts should hold that women must be given combat assignments on the same basis as men, I would like to point out that present rules for conscientious

objection permit conscientious objection to military service totally or to combat service only. Many young men who have conscientious objection to combat duty are serving with honor in non-combat assignments.

The probable actual situation, knowing the very conservative attitude of the military, is that if the draft is still in effect when the Equal Rights Amendment becomes operative, women who want combat will have a hard time getting it. The military will use all the legal latitude they can muster to avoid assigning women to combat. It is more likely they will get KP.

With all the legislative gains women have made in this past year, the struggle to make these goals meaningful for individual women has just begun.

We all must work in our States that have not yet ratified the Equal Rights Amendment.... talk with legislators and supply them with proponents materials. Assure them we are ready to assume responsibilities with our rights--and the job will not be done after ratification either.... it will take many many years of constant pressure on Government agencies and employers and many complaints filed by courageous women, before true equality of opportunity is won for women, for men and for children.

APPENDIX G

National Organizations Supporting the Equal Rights Amendment

American Association of University Women
American Association of Women Ministers
American Bar Association
American Civil Liberties Union
American Federation of Soroptimist Clubs
American Federation of Teachers (AFL-CIO)
Americans for Democratic Action
American Home Economics Association
American Jewish Congress
American Medical Women's Association
American Newspaper Guild
American Nurses Association
American Psychological Association
American Public Health Association
American Society of Women Accountants
Association of American Women Dentists
Association of the Bar of the City of New York
B'Nai B'rith Women
Church Women United
Citizens' Advisory Council on the Status of Women
Common Cause
Communication Workers of America (AFL-CIO)
Council for Christian Social Action, United Church of Christ
Ecumenical Task Force on Women and Religion (Catholic Caucus)
Federally Employed Women (FEW)
General Federation of Women's Clubs
Intercollegiate Association of Women Students
International Association of Human Rights Agencies
International Brotherhood of Teamsters (AFL-CIO)
International Union of Electrical, Radio, and Machine Workers (AFL-CIO)
International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
Interstate Association of Commissions on the Status of Women
League of American Working Women
League of Women Voters
National Association for the Advancement of Colored People (NAACP)
National Association of Colored Women's Clubs
National Association of Negro Business and Professional Women's Clubs
National Association of Railway Business Women
National Association of Women Deans and Counselors

National Association of Women Lawyers
National Board of the Leadership Conference of Women Religious
National Board of the YWCA
National Coalition of American Nuns
National Democratic Committee
National Education Association
National Federation of Business and Professional Women's Clubs
National Federation of Republican Women's Clubs
National Organization for Women (NOW)
National Republican Committee
National Welfare Rights Organization
National Woman's Party
National Women's Political Caucus
Network (A national task force to facilitate the process of political education and action for American religious women and their organizations in a ministry for social justice)
President's Task Force on Women's Rights and Responsibilities
Professional Women's Caucus
St. Joan's Alliance of Catholic Women
Theta Sigma Phi
United Presbyterian Church
Unitarian Universalist Association
Unitarian Universalist Women's Federation
U.S. Department of Labor and the Women's Bureau
Women's Christian Temperance Union
Women's Equity Action League (WEAL)
Women's International League for Peace and Freedom
Women's Joint Legislative Committee for Equal Rights
Women United

MEMORANDUM -- Need for Studies of Sex Discrimination in Public Schools

The Citizens' Advisory Council on the Status of Women has adopted the following recommendation:

> State and city commissions on the status of women and other groups interested in education should foster the review of local public school systems to determine the degree of sex discrimination, especially with respect to (1) schools restricted to one sex, (2) courses of study in co-educational schools restricted to one sex, (3) the per capita expenditure of funds by sex for physical education courses and physical education extra curricular and other extra curricular activities, (4) textbooks, library books, and other curriculum aids, (5) school activities, such as hall patrols, safety squads, room chores, etc., and (6) promotion of teachers.

This paper is designed to be helpful to organizations undertaking the suggested review. Since we adopted our recommendation Public Law 92-318, the "Education Amendments of 1972" have been enacted, prohibiting with some exceptions discrimination in Federally-assisted education programs, including those in elementary and secondary education. This Act will give organizations seeking elimination of bias in the schools a new means of effecting change.

The Council has also made recommendations and published papers on the Equal Rights Amendment, maternity leave, and alimony and child support.

Sincerely,

Jacqueline G. Gutwillig

JACQUELINE G. GUTWILLIG
Chairman

APPENDIX H

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN
Room 1336, Department of Labor Building
Washington, D. C. 20210

MEMORANDUM: Need for Studies of Sex Discrimination in Public Schools

The Citizens' Advisory Council on the Status of Women recommends that:

> State and city commissions on the status of women and other groups interested in education should foster the review of local public school systems to determine the degree of sex discrimination, especially with respect to (1) schools restricted to one sex, (2) courses of study in co-educational schools restricted to one sex, (3) the per capita expenditure of funds by sex for physical education courses and physical education extra curricular and other extra curricular activities, (4) textbooks, library books, and other curriculum aids, (5) school activities, such as hall patrols, safety squads, room chores, etc., and (6) promotion of teachers.*

Why are sex discrimination studies needed?

Systematic surveys of public schools in Ann Arbor, Michigan, and New York City by women's organizations document areas of inferiority in the educational opportunities afforded girls at all levels of the public schools surveyed. The Council believes that similar conditions are common in the many public school systems throughout the country.

Teacher and counselor attitudes and practices often discourage girls' aspirations and limit their sense of autonomy and self-image. Analysis of widely used textbooks provides evidence that women and girls are usually represented as passive followers of men and boys and occupational roles for women and girls are usually limited to that of the homemaker or to sex stereotyped occupations as secretary, teacher, sales clerk or nurse. More than half of the women and girls in public vocational programs are being trained in home economics and one-third are studying office practices, while vocational courses leading to the often higher-paying jobs in trades and industry are often closed to girls.

* The Council is indebted to Dr. Rita Ricardo Campbell, Senior Fellow, Hoover Institution, Stanford University and a member of the Council, for gathering, organizing, and presenting the information that led to this recommendation and paper.

Opportunities for girls to gain recognition through excellence in sports are by no means equal to those for boys, and the development by girls of strong, healthy bodies is not given proper emphasis.

That discrimination is generally prevalent in public school systems is borne out by recommendations of some State commissions on the status of women, reports in the media, personal experiences of Council members, and experiences of other men and women interested in the status of girls and women.

Even some preschool classes and child development centers are reported to separate boys' and girls' toys and to discourage playing by one sex with toys identified with the opposite sex. Books for preschool age children are reported to be among the worst offenders in sex role stereotyping.

Who should make the reviews?

Ideally such surveys should be conducted by State or local boards of education in cooperation with State or City status of women commissions and/or representatives of other interested citizen volunteer groups. Surveys by volunteer groups which have been published are listed in the Appendix.

Maximum community understanding and support will be necessary to secure remedial action. PTA's, teachers organizations, women's and youth organizations, and news media, are particularly important, and their participation in the survey will help mobilize the support needed to effect change. Resistance to change should be expected. The New York City Board of Education did not admit girls to Stuyvesant High School of Science and Mathematics or Brooklyn Technical High School, two of the most prestigious high schools, until the Board was sued in a State Court in 1969. The Board avoided a judicial decision by admitting the plaintiff, but still has many high schools, particularly vocational schools, restricted to one sex. In 1971, 446 girls in a student body of 2,322 were enrolled at Stuyvesant and 180 in a student body of slightly over 5,000 at Brooklyn Technical High School.

What should be investigated?

Below are listed the forms of sex discrimination and examples that have come to the Council's attention. This list is obviously incomplete and should not limit the area of investigation of any study group.

1. One sex schools. Single sex public schools still exist in a number of cities usually with the result of limiting girls'

further educational and vocational opportunities. For example, when New York City chapter of the National Organization for Women (NOW) studied New York City schools in 1971 there were 12 high schools for boys only and 5 for girls.

Ironically girls in New York City required to take cooking in junior high school are not admitted to the Food and Maritime Trades High School, the only school in the city where they could study to be chefs.

Two vocational high schools in Washington, D.C. remain restricted to boys. Two vocational schools earlier restricted to girls have been opened to boys. Baltimore, Philadelphia, Detroit, and New Orleans have been reported to have sex-segregated public schools. All of Boston's schools will be co-educational next year as a result of a new State law prohibiting sex discrimination in elementary and secondary schools.

The Office of Education does not include in the data it gathers about schools any information about limitations of schools or courses to one sex. The Council has recommended that future surveys include student composition by sex and race.

2. One sex or practically one sex courses in co-ed schools. More prevalent than single sex schools are courses limited to one sex--particularly shop, cooking, sewing, physics, and work-study programs. Frequently courses not limited to one sex become practically one sex courses through formal and informal counseling and subtle discouragement. Courses that are one sex or predominantly one sex should be identified and the reasons identified.

3. Physical education, sports, and other extra curricular activities. This is the area where discrimination is most pervasive and most readily apparent. Per capita expenditures on these activities by sex are an objective measure of the discrimination. Principals and teachers sometimes discourage an interest in participation in sports by girls. Facilities as swimming pools, tennis and basketball courts are generally far less available, measured on a dollar, per capita basis of interested participants, to girls than boys. In addition, coaches of girls' sports are rarely supplied and if available are often not included in policymaking committees.

Short-changing of girls in physical education and sports deprives them of the opportunity to establish life-time habits of exercise which lead to a high level of continuing good health in adult life.

The opportunity for achievement in sports, scholarships and other recognition for ability in sports and for developing a competitive spirit within a framework of team cooperation should be available to girls. The Ann Arbor, Michigan study discusses denial of opportunity in sports in some detail.

Other examples of this type of discrimination are sex-stereotyping of musical instruments; choice of students for teachers' helpers, hall proctors, and safety patrols; staffing of school newspapers; and participation in debating teams.

4. Textbooks, library books, and other curriculum aids. The discrimination in textbooks and other books has been well documented, and the list of items in the Appendix includes several sources of information as to defects in present texts and efforts to remedy the situation. Both the Ann Arbor and New York City surveys cover this topic and list remedial texts and books.

Included in the report of the survey of New York City Schools is a study of early grade readers, which reports that:

> In the early grade readers the oldest child in a family is always a boy. Boys are associated with making, earning, playing active games, learning, romping with dogs and helping their fathers.
>
> Girls are associated with helping their mothers or brothers, playing with kittens, getting into minor forms of trouble and being helped out by their brothers. Patterns of dependence, passivity and domesticity are apparent. Story lines from Scott Foresman's first three primers go as follows:
>
> > Boys set up carnival act. Boy teaches dog to jump for food. Boy solves problem of keeping mother's floors clean. Boy solves problem of runaway dog. Boy plays ball. Boy uses magnet to solve problem for girl. Boy builds car, girls interfere.
>
> Story lines for girls go:
>
> > Girl is frightened by older brother. Girl is helped by older brother. Girls play with Teddy and kitten.

Girl is helped by older boy. Girls solve their own problem (this is very unusual). Girl mistakes cat on television for her own kitten. Girl goes shopping with mother. Girl helps mother choose books. Girl paints picture of cat.

5. Promotion of teachers. The sex discrimination in filling supervisory and administrative positions in educational institutions not only harms the teachers but also the girl students by reinforcing the occupational stereotypes in textbooks and media. Women constitute 84.7 percent of elementary school teachers but only 19.4 percent of supervisory principals; and 30.2 percent of teaching principals (usually in smaller schools); 45.9 percent of secondary teachers but 35.3 percent of junior high principals, and 3.0 percent of high school principals.*

   A local survey should include tables by sex of elementary, junior high, and secondary teachers, principals, supervisory personnel, and personnel receiving extra pay for after-school coaching sports, drama, etc. Non-professional personnel by pay level should also be included.

6. Counseling. Many counselors and teachers lack information and sensitivity to changing life patterns of women and to widening vocational and higher educational opportunities resulting from changing attitudes and equal opportunity legislation.

   Interviewing of members of the Board of Education, the Superintendent's staff, principals and counselors, and women students, particularly those organized in sports teams and extra curricular groups, may be necessary to reveal prevailing attitudes and informational gaps in a local school system. Special programs to provide greater awareness and knowledge for all school personnel may be indicated.

What remedial action can be taken?

If the school board has been an active and willing participant in the survey and community support is present, remedial action on a voluntary basis should be feasible. Goals for remedying inequities and timetables should be drawn up and agreed to.

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* Data on principals from National Education Association Research Bulletin 49, Oct. 1971, "Professional Women in Public Schools 1970-71;" figures on percent of elementary and secondary teachers who are women are estimates from the NEA Research Division based on another study the same year.

If the school board is unwilling to correct discrimination, there are a number of avenues open for further action. Advice and assistance might be sought from the State board of education. In some States, the State board has considerable authority over local boards.

Title IX of Public Law 92-318, the Education Amendments of 1972, provides that "No person in the United States shall, on the basis of sex; be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...." While this prohibition applies generally to elementary and secondary schools, it does not apply to "admissions" to elementary and secondary schools, except to "institutions of vocational education." There are also general exceptions for religious institutions and military schools.

Each Federal agency empowered to extend Federal financial assistance is responsible for enforcement of this provision. The Department of Health, Education and Welfare would be the primary source of Federal financial assistance for elementary and secondary schools, and information concerning enforcement may be requested from the Secretary of Health, Education and Welfare, Washington, D.C. 20201.

Another possibility that can be explored is enactment of State legislation such as that in Massachusetts and Illinois, which in 1971 enacted laws prohibiting discrimination in public schools because of sex.*

Legal action might be instituted under an equal rights amendment to State constitutions or the 14th amendment to the U.S. Constitution. Illinois, Pennsylvania, and Virginia have ratified State constitutional amendments. The Texas, Washington, New Mexico, Wisconsin, Connecticut, and Maryland legislatures have passed amendments, but they have not yet been ratified by the voters.

Court cases challenging the validity under the 14th amendment to the U.S. Constitution of sex discrimination in education are listed in the Appendix.

Exchange of Information

The Council would appreciate receiving copies of surveys of school systems with information as to whether copies are available to interested groups. We shall publish addenda to our list of useful publications listing the reports that are available. Dr. Rita Ricardo Campbell, Senior Fellow, Hoover Institution, Stanford University, Stanford, California 94305, will be glad to give informal assistance but cannot give legal advice. Her telephone number is: Area Code 415--321/2300, ext. 2074.

* Mass. Gen. Laws Ann. ch. 76 § 5 (Supp. 1971); Ill. Ann. Stat. ch. 122 § § 34-18 and 10-22.5 (Smith-Hurd Supp. 1971).

Useful Publications

The Citizens' Advisory Council on the Status of Women does not endorse any publications or their contents. We call the following items to your attention as useful and thought-provoking background materials in planning a survey of a public school system.

School Systems

Committee to Eliminate Sexual Discrimination in the Public Schools, Let Them Aspire! A Plea and Proposal for Equality of Opportunity for Males and Females in the Ann Arbor Public Schools, Second Edition, August 1971, available from Marcia Federbush, 1000 Cedar Bend Drive, Ann Arbor, Mich. 48105, $1.75.

National Organization for Women, New York Chapter, Report on Sex Bias in the Public Schools, Revised Edition, 1972, available from NOW, 28 East 56th, New York, N.Y. 10022, $2.25.

New York Board of Regents, Equal Opportunity for Women, Position Paper No. 14 of the Regents, May 1972, available from New York State Education Department, Publications Distribution Center, Washington Ave., Albany, N.Y. 12224.

Pennsylvania Department of Education, Sexism in Education, Joint Task Force Report, 1972, available from Pennsylvania Human Relations Commission, 100 North Cameron Street, Harrisburg, Pennsylvania 17101.

Emma Willard Task Force on Education, Packet on Discrimination in Schools, 1520 West 27th St., Minneapolis, Minn. 55408, $3.50. Not a survey such as New York and Ann Arbor listing; includes bibliography and other materials primarily for teachers.

Stereotyping in Books

Colorado Commission on the Status of Women, Interim Report on Children's Literature, available from Mrs. Blanche Cowperthwaite, Chairman, Colorado Commission on the Status of Women, 1218 Denver Club Building, Denver, Colorado 80202, $5.00.

Feminist on Children's Media, Little Miss Muffitt Fights Back, P.O. Box 4315, Grand Central Station, New York, N.Y. 10017, 1971. Bibliography of forty-eight pages, recommending non-sexist children's books, 40¢.

Howe, Florence, "Educating Women: No More Sugar and Spice," Saturday Review, October 16, 1971, p. 76, reprints available from KNOW, Inc., P.O. Box 86031, Pittsburgh, Penna. 15221, 20¢. General discussion of stereotyping in texts.

Weitzman, Lenore J., Eifler, Deborah, Hokada, Elizabeth, and Ross, Catherine, "Sex-Role Socialization in Picture Books for Preschool Children," American Journal of Socialogy, Vol. 77, No. 6, May 1972.

Women on Words and Images, Dick and Jane as Victims! Sex Stereotyping in Children's Readers, Box 2163, Princeton, N.J. 08540, 1972, $1.50.

Trecker, Janice Law, "Women in U.S. History Textbooks," Social Education, Vol. 35, No. 3, March 1971. Available from Social Education, 1201 16th St., N.W., Washington, D.C. 20036, $1.50.

Counseling

Bem, Sandra and Daryl, Training the Woman to Know Her Place: The Social Antecedents of Women in the World of Work, available from the Bems, Department of Psychology, Stanford University, Stanford, Calif. 94305.

Campbell, Rita Ricardo, Women's Life Styles in the '70's, address Stanford Alumni Day, May 22, 1971, single copies free from Council.

Women's Bureau, U.S. Department of Labor, Washington, D C. 20210. Single copies free:

Why Not Be--

an Engineer? Leaflet 41, 1971, 10¢.
an Optometrist? Leaflet 42, 1968, 10¢.
a Pharmacist? Leaflet 43, 1968, 10¢.
a Medical Technologist? Leaflet 44, 1971, 10¢.
a Mathematician? Leaflet 45, 1968, 10¢.
a Public Relations Work? Leaflet 46, 1970, 10¢
a Technical Writer? Leaflet 47, 1971, 10¢.
a Personnel Specialist? Leaflet 48, 1968, 10¢.
an Urban Planner? Leaflet 49, 1970, 10¢.
an Apprentice? Leaflet 52, 1970, 10¢.

Careers for Women in Conservation, Leaflet 50, January 1969, 10¢.
Expanding Opportunities for Girls--Their Special Counseling Needs, 1971.

Skilled Trades for Girls. Reprint from Occupational Outlook Quarterly, December 1967.
Job Horizons for College Women, Bull. 288, 1967, 35¢.
Careers for Women in the Armed Forces.

Items with price listed may be secured in quantity from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Federal Prohibitions on Discrimination in Employment

"Guidelines on Discrimination Because of Sex," Equal Employment Opportunity Commission, Washington, D.C. 20506, free.

"Sex Discrimination Guidelines" and "Affirmative Action Programs," (Order 4), Office of Federal Contract Compliance, Department of Labor, Washington, D.C. 20210, free.

"Equal Pay," Wage and Hour Division, Department of Labor, Washington, D.C. 20210, free.

"Brief Highlights of Major Federal Laws and Order on Sex Discrimination," Women's Bureau, Department of Labor, Washington, D.C. 20210, free.

The Association of American Colleges, Project on the Status and Education of Women, 1818 R Street, N.W., Washington, D.C. 20009, publishes accurate and up-to-date information on Federal prohibitions against discrimination in education.

Judicial Decisions

Kirstein et al v. Rector and Visitors of the University of Virginia, 309 F.Supp. 184(U.S. District Court-ED Va.) Copies of brief and complaint available at cost of copying from Philip J. Hirschkop, 110 No. Royal St., P.O. Box 234, Alexandria, Va. 22313. The court held that 14th amendment required admission of women to University of Virginia at Charlottesville.

Williams v. McNair, 28 L.Ed.2d 235; 316 F.Supp. 134 (U.S. District Court-SC) The Supreme Court affirmed without opinion and without hearing the decision of the lower court that South Carolina could limit admission to Winthrop College to women.

Smith et al United States intervenor v. Concordia Parish School Board et al, Civil Action # 11, 577 (U.S. District Court WD La-Monroe Div. Sept. 3, 1970) Copies of opinion available at cost of copying from Women's Rights Law Reporter, 180 University Ave., Newark, N.J. 07102. The Court ruled that sex segregated schools were impermissible as a part of a plan to racially integrate public schools.

Sanchez et al v. Baron et al, Civil Action # 69 C-1615(U.S. District Court-EDNY). Copies of complaint and briefs available at cost of copying from Law Center for Constitutional Rights, 588 Ninth Ave., New York, N.Y. 10036. This case challenges the constitutionality of N.Y.C. Board of Education policies excluding women from shop classes and the unequal physical education programs and facilities.

Brenden v. Independent School District 742, 40 Law Week 2789(U.S. District Court-Minn.) Minnesota State High School League's rule prohibiting girls from participating in boys' athletic program, as applied to two girls who admittedly are able to compete on par with boys and are provided no alternative competitive opportunity, violates Equal Protection Clause of Fourteenth Amendment.

Bray v. Lee, 40 Law Week 2574(U.S. District Court-Mass.) Use of separate and different standards to evaluate examination results in determining admissibility of boys and girls to Boston Latin School constitutes violation of Equal Protection Clause of Fourteenth Amendment.

Ordway v. Hargraves, 39 Law Week 2551(U.S. District Court-Mass.) Absent showing of valid educational or health reason, Massachusetts local school board cannot ban attendance from normal class schedule of pregnant, unmarried high school student.

Shull v. Columbus Municipal Separate School District, 338 F.Supp. 1376 (U.S. District Court ND Miss-E.D.) Students may not be excluded from the schools of a school district for the sole reason they are unwed mothers (violation of 14th amendment).

Danielson v. Board of Higher Education, 71 Civ. 2985(SDNY, 1972). Opinion denying motion to dismiss. Pleadings available from Nancy Stearns, Center for Constitutional Rights, 588 9th Avenue, New York, N.Y. 10036. Male professor in CCNY, who had been denied child rearing leave, charges practice of allowing child rearing leave only to mothers violates 14th amendment.

Davis v. Meek, 40 Law Week 2800(U.S. District Court-ND Ohio). Preliminary injunction granted to married student who was denied participation in extra curricular activities on grounds that rule was invasion of privacy. While this is not a sex discrimination case, some of the language in the opinion might be useful in sex discrimination cases involving sports. Also see Holt v. Shelton, 40 Law Week 2741, (MD Tenn., 4/21/72) School board rule barring married high school students from extra curricular activities held unconstitutional.

La Fleur v. Cleveland Board of Education, 41 Law Week 2090(6 CA July 27, 1972) Cleveland Board of Education rule requiring pregnant teachers to take leave of absence five months before birth of child and to continue on such status until the beginning of the first school term following the date when the baby is three months old held "arbitrary and unreasonable" and in violation of the 14th amendment.

The Women's Rights Law Reporter, 180 University Avenue., Newark, N.J. 07102, published biannually, includes a listing of cases relating to sex discrimination in education. Single copies are $3.00. Subscriptions for six issues are $15.00.

Addendum to Appendix, Useful Publications
Need for Studies of Sex Discrimination in Public Schools
Citizens' Advisory Council on the Status of Women

The following publications were received too late to be included in the revision of this publication:

Report of the Women's Rights Task Force on Career Education, An Overview of The Dual Problems of Sexism and Sex Discrimination in Vocational Education in New Jersey. For copies write Jean L. Ambrose, Chair-one, 549 Lenox Avenue, Westfield, New Jersey 07090.

The Education Committee, Delaware Chapter of the National Organization for Women, Sex Discrimination and Sex Stereotyping in the Alfred I. Dupont School District. Copies available from N.O.W., P.O. Box 932, Wilmington, Delaware 19899.

Sadker, Myra and David, "Sexual Discrimination in the Elementary School," National Elementary Principal, October 1972. Single copies $2.00, may be ordered from Editor, National Elementary Principal, National Association of Elementary School Principals, 1801 North Moore Street, Arlington, Virginia 22209.

Cosper, Wilma Baker, "An Analysis of Sex Differences in Teacher-Student Interaction as Manifest in Verbal and Nonverbal Behavior Cues," reprinted from Dissertation Abstracts International, Vol. XXXII, Number 1, 1971. A microfilm or xerographic copy of the complete manuscript is available from the publisher, University Microfilms, Ann Arbor, Michigan, at the standard prices: any microfilm copy at $4.00, and any xerographic copy at $10.00 plus shipping and handling and any applicable taxes.

September 20, 1972

PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e-12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, § 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Section 1604.1 General Principles.

(a) References to "employer" or "employers" in Part 1604 state principles that are applicable not only to employers, but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

Section 1604.2 Sex as a Bona Fide Occupational Qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels -- "Men's jobs" and "Women's jobs" -- tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented state employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by Title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that state laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by Title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established

unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of states require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by state law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented state employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of Title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the state law is in conflict with and superseded by Title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some states require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

Section 1604.3 Separate Lines of Progression and Seniority Systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect

any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression" and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

Section 1604.4 Discrimination Against Married Women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

Section 1604.5 Job Opportunities Advertising.

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

Section 1604.6 Employment Agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

Section 1604.7 Pre-employment Inquiries as to Sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

Section 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in Title VII is co-extensive with that of the other prohibitions contained in Title VII and is not limited by Section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of Section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under Title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

Section 1604.9 Fringe Benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

Section 1604.10 Employment Policies Relating to Pregnancy and Childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Women Appointed or Promoted (Career and Non-Career)
By the Nixon Administration to High Level Positions
(GS-16 or Above) January 1, 1972 - December 31, 1972

Abdellah, Faye G.	Chief Nurse Officer - Commissioners Corps, Department of Health, Education and Welfare
Allan, Virginia R.	Deputy Assistant Secretary for Public Affairs, Department of State
*Alpern, Anita	Director, Program Review and Analytical Service Staff, Department of Treasury
*Belcher, Marjorie S.	Multi-Sector Officer, Agency for International Development
Bernstein, Bernice L.	Regional Director, Office of the Secretary Department of Health, Education and Welfare
*Bloch, Beate	Associate Solicitor for Division of Labor-Management Laws, Department of Labor
*Brewer, Jane	Dean of National Security Agency Schools--Languages, Department of Defense
*Burgoon, Beatrice	Director, Office of Labor-Management Relations Services, Department of Labor
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*Cusack, Mary Ann	Education Advisor, Agency for International Development
Daly, Maxine	Regional Director, Region X, Seattle Department of Labor
Doyle, Mary A.	Development Training Officer, Agency for International Development
*Duerk, Alene B. (Rear Admiral, USN)	Head, Navy Nurse Corps, Department of the Navy, Department of Defense
*Ganeshan, Jane C.	Deputy Assistant Director for Civil Service Personnel, Agency for International Development
*Gaynor, Margaret	Associate Director for Congressional Relations, Office of Economic Opportunity
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Green, Eleanor K.	Education Advisor Teacher Training, Agency for International Development
Hall, Cynthia Holcomb	Judge, United States Tax Court
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*Kies, Marion W.	Chief, Section on Myelin Chemistry National Institute of Health, Department of Health, Education and Welfare
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*Kranidas, Ellen A.	Director, Office of Management and Organization, Office of Administration Department of Housing and Urban Development
*Lawton, Esther	Deputy Director of Personnel, Department of the Treasury
*Lawton, Mary C.	Deputy Assistant Attorney-General, Office of Legal Counsel, Department of Justice
*Lloyd, Maryann B.	Assistant General Counsel, National Science Foundation
*Lynch, Marjorie	Regional Director, Region X, Seattle ACTION
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Mlay, Marian	Director, Division of Consolidated Funding Department of Health, Education and Welfare
*Neville, Mary C.	Education Advisor Teacher Training Agency for International Development
*Price, Donna	Chemist, Naval Ordnance Laboratory, White Oak, Department of Defense

*Ramey, Helen L.	Deputy Director - Indonesia, Agency for International Development
*Ray, Dr. Dixy Lee	Chairman, Atomic Energy Commission
*Rice, Dorothy	Deputy Assistant Commissioner for Research, Social Security Administration Department of Health, Education and Welfare
*Scott, Jessie M.	Director of Nursing, National Institute of Health, Department of Health, Education and Welfare
*Smyth, Virginia	Regional Commissioner, Special Rehabilitation Services, Department of Health, Education and Welfare
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*Verville, Elizabeth G.	Assistant Legal Advisor for East Asian and Pacific Affairs, Department of State
Washington, Benetta	Associate Director, Women's Center Department of Labor
*White, Louise	Director, Teacher Corps, Department of Health, Education and Welfare
*Whitman, Dr. Marina von N.	Member, Council of Economic Advisers The White House
*Wilkowski, Jean Mary	Ambassador, Republic of Zambia Department of State

*Willard, Dr. Beatrice	Member, Council on Environmental Quality
Wilson, Helen A.	Multi-Sector Officer, Agency For International Development

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* First woman appointed to this position.

List furnished by the White House

APPENDIX K

CACSW RECOMMENDATION ON CREDIT

Testimony before the National Commission on Consumer Finance and evidence gathered by the Women's Legal Defense Fund of Washington, D.C., indicate clearly that credit practices discriminate against women. The practice of denying credit to women solely because they are married is humiliating and unnecessary and works great hardship on women subsequently widowed or divorced. There is also evidence that single women are in practice denied credit under circumstances where it would be granted to men.

Particularly offensive are the practices of some lenders' inquiring into, and sometimes requiring affidavits as to, birth control practices of married women. There is no evidence to support the assumption that married couples with a credit rating good enough to get a loan will not pay their debts if they have children.

Believing that the discrimination in granting credit results in part from unexamined assumptions and outmoded attitudes, rather than from deliberate policy, the Citizens' Advisory Council on the Status of Women recommends that:

(a) credit-granting institutions survey their policies and actual practices and take corrective action as needed, and

(b) community groups survey the practices of local credit-granting institutions with a view to gathering facts, stimulating awareness, correcting discriminatory practices thru consultation, and changing the laws where necessary.

Helpful information may be secured from the Department of Human Rights, City of Saint Paul, 515 City Hall, St. Paul, Minn. 55102; the District of Columbia Commission on the Status of Women, Room 204, District Building, 14th & Pennsylvania Ave., N.W., Washington, D.C. 20004; the Pennsylvania Commission on the Status of Women, Room 609, Main Capitol Building, Harrisburg, Pa. 17120; and the Consumer Credit Association, 2819 N. Fitzhugh, Dallas, Texas 75221. The St. Paul Department has made an installment loan survey of local banks; the D.C. and the Pennsylvania Commissions are conducting studies; and the Dallas credit association conducted a survey, which resulted in a publication, a series of newspaper articles, and a TV series produced by Channel 13; KERA-TV, 3000 Harry Hines Boulevard, Dallas, Texas 75201.

Adopted by the Citizens' Advisory Council on the Status of Women, October 7, 1972.

APPENDIX L

CACSW Recommendation on Manpower Training and Household Arts

The Citizens' Advisory Council on the Status of Women has reviewed the recommendations on manpower training and training for household employment* of the President's Task Force on Women's Rights and Responsibilities, which read as follows (pages 20 and 26 of A Matter of Simple Justice):

> The Secretary of Labor should establish priorities as sensitive to sex discrimination as to race discrimination in manpower training programs and in referrals to training and employment.
>
> The Secretary of Labor and the Secretary of Health, Education, and Welfare should give training for household employment a high priority in manpower training.

The Council has studied factual material presented by officials of the Manpower Administration of the Labor Department, and proposals of the American Home Economic Association and the Oklahoma Committee on Household Employment. The Council finds a general lack of improvement in the percentage of women in manpower training programs since 1969 and no increased emphasis on training in the household arts.

Women need training as much, or more than men, because:

(a) Sixty-one percent of all adults in poverty are women (ages 16 through 59).

(b) Eighty-seven percent of the adults receiving Aid to Families with Dependent Children are women.

(c) Approximately 20% of all families in poverty are headed by women.

(d) Forty-five percent of the unemployed adults are women (ages 20 through 64).

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* The manpower training referred to is funded by the Labor Department under the Manpower Development and Training Act. The primary focus has been on training and work-experience programs for unemployed and underemployed people (chiefly the disadvantaged).

(e) Forty-five percent of unemployed teenagers are young women.

(f) Young men have far greater and better opportunities for training in the military service and in many public vocational training schools than young women.

(g) Women have the primary responsibility for rearing children.

The Citizens' Advisory Council, therefore, urgently:

1. Reaffirms the recommendation of the President's Task Force on Women's Rights and Responsibilities that the Secretary of Labor "establish priorities as sensitive to sex discrimination as to race discrimination in manpower training programs and in referrals to training and employment.

2. Urges that the Labor Department use its full powers to require that women trainees in all programs be offered all training available to men and fully counseled as to relative pay and advantages of training for "men's" jobs. Manpower training programs must not reinforce sex-stereotyping of jobs, and

3. Recommends that the Secretary of Labor and the Secretary of Health, Education, and Welfare give a high priority to vocational training programs in the household arts and to manpower training proposals for upgrading the occupation.

Adopted by the Citizens' Advisory Council on the Status of Women
October 7, 1972.

* U. S. GOVERNMENT PRINTING OFFICE : 1973 O - 513-381 (75)

The Council was established by Executive Order 11126 in 1963 on the recommendation of the President's Commission on the Status of Women, whose chairman was Mrs. Eleanor Roosevelt. Miss Margaret Hickey was the first chairman, followed by Senator Maurine B. Neuberger. Mrs. Jacqueline G. Gutwillig is its third chairman. Council members are appointed by the President and serve without compensation for an indeterminate period. One of the Council's primary purposes is to suggest, to arouse public awareness and understanding, and to stimulate action with private and public institutions, organizations and individuals working for improvement of conditions of special concern to women.

The views expressed by the Council cannot be attributed to any Federal agency.